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ABSTRACT

The hearing considered testimony from public and private witnesses on S.1017, the American Indian Self-Determination and Education Reform Act of 1973, and other related legislation. Three of the measures to be considered are identical to proposals submitted by the administration to the 92nd Congress: S.1340, providing for the detail of civic service employees to tribal groups; S.1342, extending the Johnson O'Malley contracting authority and providing for the detail of Public Health Commissioned Officers to tribal groups; and S.1343, providing for Indian takeover of Federal programs. In general, the bills are to promote maximum Indian participation in their own government and education, to provide for full tribal participation in certain programs and services conducted by the Federal government for Indians, and to encourage the development of the human resources of the Indian people. (FF)

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INDIAN SELF-DETERMINATION AND EDUCATION PROGRAM

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 1017 and Related Bills

BILLS TO PROMOTE MAXIMUM INDIAN PARTICIPATION IN THE GOVERNMENT AND EDUCATION OF THE INDIAN PEOPLE, TO PROVIDE FOR THE FULL PARTICIPATION OF INDIAN TRIBES IN CERTAIN PROGRAMS AND SERVICES CONDUCTED BY THE FEDERAL GOVERNMENT FOR INDIANS, TO ENCOURAGE THE DEVELOPMENT OF THE HUMAN RESOURCES OF THE INDIAN PEOPLE, AND FOR OTHER PURPOSES

JUNE 1 AND 4, 1973

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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INDIAN SELF-DETERMINATION AND EDUCATION PROGRAM

FRIDAY, JUNE 1, 1973

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk, Bartlett, Fannin, and Hansen.

Also present: Jerry T. Verkler, staff director; Forrest Gerard, professional staff member; Mary Gereau, consultant; and Rick Lavis, legislative assistant to Senator Fannin.

Senator ABOUREZK. The Indian Affairs Subcommittee hearings on Indian education are now in order.

OPENING STATEMENT OF HON. JAMES ABOUREZK, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

The purpose of today's hearing is to consider testimony from public and private witnesses on S. 1017, the Indian Self-Determination and Education Reform Act of 1973, and other related legislation.

Three of the measures to be considered are identical to proposals submitted by the administration to the 92d Congress: S. 1340, providing for the detail of civil service employees to tribal groups; S. 1342, extending the Johnson-O'Malley contracting authority and providing for the detail of Public Health Commissioned Officers to tribal groups; and S. 1343, providing for Indian takeover of Federal programs.

The Indian Self-Determination Act, title I of S. 1017, which provides statutory authority to assist Indians in the implementation of a realistic self-determination policy, was introduced in the last Congress as S. 3157 by Senator Jackson and Senator Allott. Senate bill 3157 carried strong support from the various Indian tribes and organizations and passed the Senate in August of 1972. The bill, however, received no action in the House.

There is, at present, a growing concern in the Indian community and in the Federal Government regarding the need for administrative reform in the delivery of Johnson-O'Malley services to the Indian students enrolled in public schools. It is clear through the legislative history of JOM that the 1934 act was never intended to strengthen the local Indian community but to provide a mechanism for assimilation of the Indian people into the mainstream of society. The vague-

ness and the ambiguity of the Johnson-O'Malley Act resulting in varied and inconsistent administrative procedures, the absence of a clear, concise policy defining the compliance and programmatic responsibility of the contracting agency and the complete lack of meaningful local Indian input, all evidence the glaring need for a fair formula which can provide for the equitable distribution of JOM funds and assure that the educational needs of Indian children are met.

We look forward to hearing the views and recommendations of the administration and other witnesses today on this particular legislation.

At this point, I shall order that copies of S. 1017, S. 1340, S. 1342, and S. 1343 and the executive communications to be made a part of the official record.

[The texts of S. 1017, S. 1340, S. 1342, and S. 1343 and executive communications follow:]

[COMMITTEE PRINT]

APRIL 24, 1973

93D CONGRESS
1ST SESSION

S. 1017

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1973

Mr. JACKSON (for himself and Mr. ABOUREZK) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

[Omit the part struck through and insert the part printed in italic]

A BILL

To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Educational Reform Act of 1973".

CONGRESSIONAL FINDINGS

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and it has denied to the Indian people an effective voice in the planning and implementing of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles; and

(2) the Federal responsibility for and assistance to education of Indian children, Indian adult education,

and Indian skills training has not affected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination through maximum involvement and participation in, and direction of, educational as well as other Federal services to Indian communities which are more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation of the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States shall be to provide the quantity and quality of educational services and opportunities which will permit Indian children and adults to compete and excel

in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means an Indian, Eskimo, or Aleut person who is a member of a tribe, band, nation, or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, for which the Federal Government provides special programs and services because of their identity as Indians;

(b) "Indian tribe" means any Indian tribe, band nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, for which the Federal Government provides special programs and services because of its Indian identity;

(c) "tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or which is controlled by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization). Such an organization shall include the maximum participation of Indians in all phases of its activities;

(d) "Secretary", unless otherwise designated, refers to the Secretary of the Interior;

(e) "school district" means any political subdivision of a State which is responsible for the provision, administration, and control of public education as defined by the law of such State; and

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. The Secretary of the Interior is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended, and parts A and D of title II of this Act, and any other program or portion thereof which the Secretary of the Interior is au-

thorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. The Secretary of Health, Education, and Welfare is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organizations of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any Indian tribe, to make a grant or grants to any tribal organization of any such Indian tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such tribal organization to enter into contract or contracts pursuant to sections 102 and 103 of this Act.

DETAIL OF PERSONNEL

SEC. 105. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any tribal organization, to detail any civil serv-

ice employee serving under a career or career-conditional appointment for a period of up to one hundred and eighty days to such tribal organization for the purpose of assisting such tribal organization in the planning, conduct, or administration of programs under contracts or grants made pursuant to section 102, 103, or 104 of this Act. The appropriate Secretary may, upon a showing by a tribal organization of a continuing need for an employee detailed pursuant to this section, extend such detail for a period not to exceed ninety days.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, personnel of the Service may be detailed by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Educational Reform Act of 1973: *Provided*, That the cost of detailing such personnel is taken into account in determining the amount to be paid to such tribal organization under such contract or grant, and that the Secretary

shall modify such contract or grant pursuant to subsection (c) of section 106 of the Indian Self-Determination and Educational Reform Act of 1973 to effect the provisions of this section."

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended,".

ADMINISTRATIVE PROVISIONS

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title.

(c) Notwithstanding any provision of law to the con-

trary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as he finds necessary to carry out the purposes of this title.

(d) The appropriate Secretary may, in his discretion, enter into contracts pursuant to sections 102 and 103 of this Act with tribal organizations, by negotiation, without advertising, for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items: *Provided*, That nothing in this title shall be construed as authorizing or requiring a tribal organization to enter into an agreement, directly or indirectly, with a non-Indian party for the construction of buildings, roads, sidewalks, sewers, mains, or similar items without compilance with requirements of advertising and competitive bidding if the same would have been required had the agreement with the non-Indian party been entered into directly by the United States.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such

terms and conditions as may be agreed upon for their use and maintenance.

SEC. 107. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title.

SEC. 108. (a) The Secretary shall promulgate regulations relative to this title no later than six months from the date of enactment of this Act.

(b) No later than sixty days prior to the promulgation of such regulations, the Secretary shall publish the proposed regulations in the Federal Register. No later than thirty days prior to the promulgation of such regulations, the Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed regulations, once published, to all interested persons.

SEC. 109. Nothing in this title shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATIONAL REFORM ACT OF 1973

SEC. 201. This title may be cited as the "Indian Educational Reform Act of 1973".

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PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. For the purpose of providing education to Indians enrolled in the public schools of any State, the Secretary is authorized to enter into contracts with any such State or political subdivision thereof, or with any Indian tribe or tribal organization residing in any such State (such State, political subdivision, Indian tribe, or tribal organization to be hereinafter referred to as "contractor") : *Provided*, That, in the event the contractor is an Indian tribe or tribal organization which resides in more than one State and the Secretary wishes to contract with such tribe or tribal organization to provide education to Indians enrolled in the public schools of more than one State, separate contracts shall be negotiated with such tribe or tribal organization for each such affected State.

SEC. 203. (a) In administering the various provisions of this Act, the Secretary shall not enter into any contract unless the prospective contractor has submitted to and has had approved by the Secretary an education plan which assures that—

(1) all taxable property within each school district affected by any such proposed contract is taxed at a rate equal to the average property tax rate in the five most comparable school districts in such State which are not eligible for assistance under part A of this title;

(2) all funds which any such affected school district receives under the provisions of the Act of September 30, 1950 (64 Stat. 1100), as amended, shall be considered local tax income for the purposes of clause (1) of this subsection;

(3) per capita payments of State and local education funds to any such affected school district are not less than the average of such payments made to such five comparable school districts referred to in clause (1) of this subsection:

(4) funds provided under any contract pursuant to section 202 shall first be used, when added to funds generated by clauses (1) and (3), to provide operational per pupil expenditures equal to the average operational per pupil expenditures from State and local funds exclusive of Federal funds, other than those referred to in (2), of the five comparable districts referred to in clause (1);

~~(4) funds provided under any contract pursuant to section 202 shall be utilized by the contractor so as to provide Indians enrolled in schools of any affected district with—~~

(5) additional funds provided under any contract pursuant to section 202 shall be utilized by the con-

tractor so as to provide Indians enrolled in schools of any affected district with such programs as:

(A) guidance and counseling services for Indian students in grades five through twelve at a ratio of not less than one counselor for every fifty Indian students;

(B) curriculum development programs, including production of special bilingual and bicultural materials, to meet the needs of Indian students;

(C) teacher aides (bilingual where appropriate) at a ratio of one per twenty Indian students in grades kindergarten through six, and one per thirty Indian students in grades seven through twelve;

~~(D) funds necessary, when supplemented by other State and local educational funds, to assure that educational personnel serving Indians receive salaries, including fringe benefits, at least equal to the average of the salary rates of professional educators in the affected State, or in the affected school district, whichever has the higher average;~~

~~(E)~~ *(D)* supplemental school lunch and school breakfast funds for Indians as needed, provided there is evidence of need, beyond assistance otherwise provided by law;

~~(F)~~ *(E)* school nursing services for Indians, provided such services are coordinated with the Indian Health Service of the Public Health Service;

~~(G)~~ *(F)* summer school programs for Indians, including academic as well as recreational, remedial, and cultural and academic enrichment components, if desired by the Indian community; and

~~(H)~~ *(G)* such other educational programs as may be mutually agreed to by the Secretary and the contractor;

(6) educational personnel serving Indians shall receive salaries, including fringe benefits at least equal to the average of the salary rates of professional educators in the affected State, or in the affected school district, whichever has the higher average;

~~(5)~~ *(7)* and amount equal to not more than 3 per centum of any funds provided to the contractor under any contract pursuant to part A of this title shall be available to the contractor for administrative and consultative costs in carrying out such contract;

~~(6)~~ *(8)* in the event that the local public school board of a school district directly affected by any such contract is not composed of a majority of Indians, a community education committee shall be established, which shall be composed of members elected by the

parents of Indian students attending the school or schools under the jurisdiction of such board, and which shall be so structured and carry out such duties as the Secretary shall by regulation provide, subject to the laws of the affected State: *Provided*, That in the event that a local Indian committee exists under the provision of section 411 of the Act of June 23, 1972 (86 Stat. 285), such committee shall suffice and be utilized for the purposes of this clause; and

~~(7)~~ *(9)* school districts educating Indian students who are members of Indian tribes which do not normally reside in the affected State and who are residing in Federal boarding facilities for the purposes of attending public schools within such districts shall be reimbursed for the full amount of the per capita costs to such school districts for educating students in comparable grades: *Provided*, That where the family place of residence of any such Indian student is within the affected State the Federal payment pursuant to part A of this title shall be reduced by the equivalent of the affected State's share of the per pupil cost as defined in clause (3) of this subsection for each such Indian student.

(b) Whenever a prospective contractor is a State education agency, prior to entering into a contract with such prospective contractor, the Secretary shall be assured that—

(1) an Indian Advisory Council on Education composed of educators and proportionally representative of all tribes within such State has been established by the State education agency;

(2) such Advisory Council has had the opportunity to fully advise and make recommendations to the chief State school officer in the preparation of the education plan pursuant to subsection (a) of this section;

(3) such Advisory Council shall have the opportunity to advise and make recommendations on the development of other programs provided for in this title; and

(4) on or before July 1 of each year, such Advisory Council shall submit to the Secretary, in such form and manner as he shall prescribe, a report evaluating the progress achieved in education of Indians in such State under programs provided for in this title.

(c) The Secretary shall enter into a contract with the State education agency of any State the public education system of which is affected by a contract or contracts pursuant to section 202, regardless of who the contractor or contractors may be, to provide the professional and support staff and administrative services necessary to assist local school districts affected by such contract or contracts in implementing the purposes of this title.

SEC. 204. (a) There are authorized to be appropriated for the first fiscal year after the enactment of this Act, and for each succeeding fiscal year, such sums as may be necessary to carry out the provisions of this part A.

(b) For the purpose of affording potential contractors adequate notice of available Federal financial assistance under this part A, appropriations for contracts pursuant to section 202 are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

SEC. 205. The Secretary shall proceed expeditiously to negotiate the contracts authorized by section 202. Such contracts and the authority provided by this part A shall replace existing education programs for Indians conducted pursuant to, and the authority to conduct and administer such programs provided by, the Act of April 16, 1934 (48 Stat. 596), as amended. Upon June 30, 1975, all authority to conduct and administer education programs for Indians pursuant to the Act of April 16, 1934 (48 Stat. 596),

as amended, shall be rescinded and that Act shall be further amended by deleting the word "education," wherever it appears.

PART B—DEVELOPMENT OF PROFESSIONALS IN INDIAN EDUCATION

SEC. 206. (a) The Secretary is authorized to establish and carry out a program of making grants to, and contracts with, institutions of higher education and other public or private nonprofit organizations or agencies with relevant experience and expertise in order to provide fellowships and carry out programs and projects to—

(1) prepare persons to serve Indians in public, private, or totally federally funded schools as educational administrators, teachers, teacher aides, school social workers, guidance counselors, school nurses, and ancillary educational personnel; and

(2) improve the qualifications of persons who are serving Indians in such capacities.

(b) In selecting participants in or recipients for fellowships to programs and projects under this section preference shall be given to Indians.

(c) No grant or contract shall be authorized under this section which does not provide for evaluation pursuant to criteria determined by the Secretary.

SEC. 207. For the purpose of making grants or contracts

pursuant to section 206, there is authorized to be appropriated $10,000,000 for the fiscal year after the enactment of this Act, and $15,000,000 for each of the next two succeeding fiscal years.

PART C—SCHOOL CONSTRUCTION

SEC. 208. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) Any contract entered into by the Secretary pursuant to this part C shall contain provisions requiring such contracting agency or district to—

(1) provide Indian students attending such facilities with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State agency or

school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction of which the facilities are located.

(c) The Secretary shall consult with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by contracts entered into pursuant to this part C. Such consultation shall be advisory to, and not binding upon, the Secretary, but shall occur prior to the entering into of any such contract.

(d) For the purposes of implementing the provisions of part C of this title, the Secretary shall determine that the rates of pay for laborers and mechanics engaged in the construction or renovation of facilities pursuant to this section 208 will be not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1921 (46 Stat. 1491), as amended.

SEC. 209. For the purpose of carrying out the provisions of this part C, there is hereby authorized to be appropriated $30,000,000 for each of the first three fiscal years after the enactment of this Act, and such sums as are necessary for each fiscal year thereafter. Funds shall remain available until expended.

PART D—YOUTH INTERN PROGRAM

SEC. 210. In order to provide meaningful and career-related work opportunities for Indian youth who are not en-

rolled in educational programs during the summer months, the Secretary is authorized to establish and carry out an Indian youth intern program for Indian students sixteen years of age or older who are regularly enrolled in secondary school, vocational school, or higher education programs during usual school terms.

SEC. 211. (a) In establishing and carrying out the Indian youth intern program, the Secretary shall designate or recognize community service fields including those related to education, child development, recreation, law, health services, engineering, research, science, government, agriculture and forestry, business and commerce, and other appropriate pursuits, which can provide useful experience to Indian youth in exploring and participating in activities related to their future choices of possible careers.

(b) The Secretary shall determine the number of Indian youth in the community or reservation who are interested in employment during the summer months in the fields designated in subsection (a) of this section.

(c) The Secretary shall require negotiations with employers for the employment of each Indian youth participating in the Indian youth intern program, such negotiations to include a job description outlining specific duties, evaluation of the progress of the Indian youth intern, and formal consultation by the employer with the Indian youth intern at least once every two weeks.

SEC. 212. In establishing and carrying out the Indian youth intern program, the Secretary shall take such action as may be necessary to assure that—

(1) each Indian youth intern shall be paid not less than the Federal minimum wage;

(2) each Indian youth intern shall engage in activities which are supplemental to those of the regular work force where he is employed and shall not replace any regular adult full-time employee, except as a temporary substitute during any normal vacation or other such leave of any such employee;

(3) the total wages paid each Indian youth intern employed by a nonprofit agency shall be paid out of funds provided in this part D;

(4) one-half the wages paid each Indian youth intern employed by other than a nonprofit agency shall be paid out of funds provided in this part D, and one-half by the employer;

(5) each Indian youth intern shall be covered by appropriate workmen's compensation laws;

(6) no Indian youth intern shall be entitled, by reason of his employment as an intern, to participate in any pension, retirement, or unemployment compensation programs;

(7) there shall be one supervisor for each twenty

Indian youth interns during their period of employment; that such supervisor shall be compensated at a rate not in excess of the minimum rate for GS–9 of the General Schedule under section 5332 of title 5, United States Code; and that with respect to the position of supervisor, preference shall be given to qualified persons residing in the locality in which the interns are employed.

SEC. 213. For the purpose of carrying out the provisions of this part D, there is hereby authorized to be appropriated $10,000,000 for the first fiscal year after the enactment of this Act, and $15,000,000 for each of the next two succeeding fiscal years.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

SEC. 214. (a) The Secretary is authorized to make grants to and contracts with universities and colleges and other public and private nonprofit agencies, institutions, and organizations, and to and with individuals for research, surveys, and demonstrations in the field of Indian education and for the dissemination of information derived from such research, surveys, and demonstrations.

(b) No grant shall be made or contract entered into pursuant to this section until the Secretary has obtained the advice and recommendations of educational specialists who are competent to evaluate proposals as to the soundness of design, prospects of productive results, and adequacy of the

resources of any applicant to conduct research, surveys, or demonstration projects. Wherever possible among the educational specialists consulted shall be Indians who are not employees of the Federal Government.

(c) No grant shall be made or contract entered into pursuant to this section until the Secretary is satisfied that the activities to be funded do not substantially duplicate research, surveys, or demonstrations the results of which are or will be accessible to the public.

SEC. 215. For the purposes of carrying out the provisions of this part E, there is hereby appropriated $2,000,000 for the first fiscal year after enactment of this Act, and $3,000,000 for each of the next two succeeding fiscal years.

PART F—ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

SEC. 216. The Secretary, after consultation with persons competent in the appropriate field of education, which persons shall include Indians who are not employees of the Federal Government, shall present to the Ninety-fourth Congress, within sixty days of the convening thereof—

(1) a proposed program of adult and continuing education designed to meet the needs of Indian people;

(2) a proposed program designed to meet the vocational and technical career education needs of Indian people;

(3) a proposed program designed to meet the early childhood education needs of the Indian people;

(4) a proposed program designed to meet the special education needs of gifted and handicapped Indians aged three to twenty-one years; and

(5) a review and analysis of existing programs in higher education for Indians administered by the Department of the Interior. and a proposed program of higher education designed to meet the needs of the Indian people.

SEC. 217. For the purpose of carrying out the provision of this part F, there is hereby authorized $750,000 for the first fiscal year after the enactment of this Act.

PART G—GENERAL PROVISIONS

SEC. 218. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

SEC. 219. No funds from any contract or grant pursuant to this title except as provided in part B shall be made available by any Federal agency directly to other than pub-

lic agencies and Indian tribes, institutions, and organizations: *Provided,* That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

SEC. 220. In the event that Indian students comprise the majority of any class or school assisted by this title, non-Indian students enrolled in the class or school may participate in programs funded by this title: *Provided,* That such participation is approved by the local public school board if such board is composed of a majority of Indians or the community education committee established pursuant to section 203 (a) (6) and by the parents of the non-Indian children: *And provided further,* That such non-Indian children are not counted for the purposes of section 203 of this Act.

SEC. 221. (a) The Secretary shall promulgate regulations relative to this title no later than six months from the date of enactment of this Act.

(b) No later than sixty days prior to the promulgation of such regulations, the Secretary shall publish the proposed regulations in the Federal Register.

(c) No later than thirty days prior to the promulgation of such regulations, the Secretary shall—

(1) submit the proposed regulations, once published, to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives; and

(2) provide, with adequate public notice, the opportunity for hearings on the proposed regulations, once published, to all interested persons. To the extent possible, all such hearings shall be held in the States and areas to be affected by this title.

SEC. 222. The Secretary, before expending funds appropriated for purposes of this title, shall be assured that such funds shall be in addition to, and not replace, other funds provided in Federal programs for the benefit of Indians.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 31 1973

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 1017, "To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish and carry out a national Indian education program; to encourage the establishment of local Indian school control; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes."

While recognizing the close relationship between Title I of this bill, the Indian Self-Determination Act and, Title II the Indian Educational Reform Act of 1973, we believe that our advice to the Congress will be more helpful if we consider and discuss the titles in two discrete sections of this letter.

I. The Indian Self-Determination Act

We would prefer enactment of S. 1343, the Administration self-determination proposal, which would provide more complete Indian control over programs devoted to their betterment and would place the decision to assume such control with Indians themselves. However, we recommend enactment of this title, if amended as suggested infra, as an interim measure to provide increased Indian direction of Federal Indian programs. Certainly the enhanced ability to contract with Indian tribes which Title I would afford could be a very useful authority for the Department to have.

Title I adopts a contractual approach to endowing American Indians with increased self-determination. The title authorizes the Secretary of the Interior to contract with Indian tribes to plan, conduct, and administer programs or portions of programs carried out under the Act of April 16, 1934 (48 Stat. 596), as amended, commonly known as the Johnson O'Malley Act; the Act of November 2, 1921 (42 Stat. 208), commonly known as the Snyder Act; and all acts subsequent thereto. The Snyder Act provides basic authority for virtually every Indian program carried out by the Department of the Interior. The Johnson O'Malley Act permits the Department to contract for the performance of certain educational and other

responsibilities with state and local institutions. Thus, enactment of this title would provide the Secretary of the Interior with the authority to contract out the full panoply of the Department's Indian programs to Indian tribes. (This Department has submitted legislation - S. 1342 - which would enable Indians to become contracting parties under the Johnson O'Malley Act, albeit by a somewhat different technique, that of amending the Act itself. Should S. 1017 be enacted, the purposes of S. 1342 would be fulfilled, and we would consider it mo[illegible].)

A parallel provision of the title would authorize the Secretary of Health, Education, and Welfare to contract with Indian tribes to carry out all his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended. These functions center on the maintenance of Indian health.

One of the more important aids in carrying out the goal of transferring programs to Indian control by way of contract appears in section 104, which authorizes both Secretaries to make grants to Indian tribes to allow them to make necessary preparation for entering into contracts authorized by the bill. We consider such grant authority to be a most useful means of removing one of the major obstacles to contracting with tribes - their inability to meet general Federal standards for contractors. The Federal contracting rules are predicated on arms-length transactions; however, many tribes lack the needed sophistication to deal at arms-length with the United States. More specifically, before a Federal contract can be effectuated, the contracting officer must make a finding that the proposed contractor is capable of performing his part of the bargain. Vis-a-vis many Indian tribes or tribal organizations, such a finding would be impossible to make, and the Department's efforts to contract with them would be stymied. The grants authorized by Title I would fund preparatory training and other activities necessary to raise Indians to the level where they can meet Federal contracting standards.

Section 105 of the bill authorizes the two Secretaries, upon the request of an Indian tribe, to detail Civil Service personnel needed by the tribes in connection with programs contracted, for a period of 180 days. The period of detail can be extended for a period not to exceed an additional 90 days if the tribe can show a need therefor. The bill specifically amends the Act of August 5, 1954, to allow the detailing of Health Service personnel and allows the Secretary of Health, Education, and Welfare to consider the expense of such details in determining payments made by him pursuant to the contract or grants to which the details are attached.

In addition, Section 105 would amend paragraph (2) of section 6(a) of the Military Selective Service Act of 1967. The amendment would allow commissioned officers of the Public Health Service serving under an agreement which credits their Public Health Service service against their military obligation under the provisions of the Selective Service Act to continue to enjoy such credit while on detail to Indian tribes.

Section 106 establishes certain administrative procedures to be followed by the two Secretaries in contracting with Indian tribes. First, although requiring compliance generally with all Federal contracting laws and regulations, the section permits certain exceptions, the most important of which would enable construction contracts to be negotiated without compliance with the bonding requirements of the Act of August 24, 1935 (49 Stat. 793), commonly known as the Miller Act.

Second, the section would permit advance payments on contracts with tribes and tribal organizations on such conditions as the Secretary deems necesary. (Contracts are now restricted by the requirements of the Act of June 30, 1949 (63 Stat. 396), and the applicable provisions of the Federal Procurement Regulations.)

Third, the section would empower the appropriate Secretary, with the consent of the tribal organization, to revise or amend any contract or grant made by him under the authority of this bill. This provision would provide the flexibility needed to insure that beneficiaries of Indian programs do not suffer, particularly during the incipience of tribal administration of such programs.

Fourth, the section would authorize the appropriate Secretary to permit a tribal organization to utilize real and personal property under his jurisdiction in connection with any contract or grant made pursuant to the bill. The existing authority for such use under the Johnson-O'Malley Act would thus be extended to Indian tribes, and broadened to include all contracts under this bill.

Section 107 gives the Secretaries needed authority to carry out the provisions of the bill and to make rules and regulations.

Section 108 of the bill appears to be a restriction on the authority granted in section 107 since it sets the terms and conditions that will be followed by the Secretary of the Interior (not both Secretaries) in the preparation and publication of the rules and regulations made to carry out the provisions of the bill. First, we see no reason to treat the two Secretaries differently and therefore recommend that both be guided by these procedures. Second, we recommend that the procedures be incorporated into a single, revised rules section, by deleting section 108 and rewriting section 107 as follows:

> "Section 107. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title.

> The Secretaries shall (a) no later than six months from the date of the enactment of this Act, promulgate said regulations, (b) no later than sixty days prior to the promulgation of said regulations, publish them in the Federal Register, and (c) no later than thirty days prior to the promulgation of said regulations, make provision, with adequate public notice, for the opportunity for hearings on the proposed regulations, once published, to all interested parties."

Finally, Title I disavows any imputation of terminating the United States' Indian trust responsibilities.

II. Indian Educational Reform Act of 1973.

Title II of S. 1017, the Indian Educational Reform Act of 1973, contains many new programs and would endow the Secretary of the Interior with a good deal of new authority. We have been hard-put to arrive at a recommendation concerning this Title because of the difficulty of fitting its provisions into the existing statutory scheme. More specifically, there is overlapping among Title II of this bill and Title IV of Public Law 92-318, a recent and major addition to Indian education law, and the Snyder Act as well.

At the outset of our discussion of Title A, we recommend the following clarification of the terms "Indian" and "Indian tribe". In section 4 of the bill, delete subsections (a) and (b) and insert in lieu thereof the following:

> "(a) "Indian" means a person who is a member of an Indian tribe;"
> "(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Part A of Title II, Education of Indians in Public Schools, authorizes the Secretary of the Interior to enter into contracts with States, their political subdivisions, or Indian tribes and organizations for the purpose of educating Indians in public schools. Any contract which the Secretary enters into must be predicated on a plan which assures, essentially, that public schools educating Indian students are funded at the same levels as comparable schools which do not have substantial Indian enrollment. Funds provided under contract would be used for certain specified purposes, including counseling, teacher training, production of bilingual teaching materials, and supplemental meal programs. Indian advisory education committees would be formed and utilized by the Secretary whenever a majority of the members of a local school board affected by such a contract

was not Indian. If the contracting party were a State educational agency, prior to entering into such a contract the Secretary would require that the agency have established, and considered the recommendations of, an Indian Advisory Council on Education which is representative of all the tribes in the State. Contracts entered into under this title would replace existing Indian education programs, and on June 30, 1975, Indian education would be phased out of the Act of April 16, 1934. Part A would authorize the appropriation of such sums as might be necessary to carry out its provisions.

The provisions of Part A are similar to those of the Administration's proposal to amend the Johnson-O'Malley Act, S. 1342. The requirements imposed by Part A upon States in their education of Indian children — and on the Secretary in entering into such contracts — do not appear in S. 1342. Certainly, however, there is no inconsistency between the two bills, and we have no objection to the safeguards which Part A would afford public school Indian students.

We recommend expanding the scope of Federal education activities included under section 203(a)(2) to include all Federal education funds as local tax income under this section. This will provide a more realistic funding picture, in regard to both basic support and supplementary services of the contractor and would result in a more equitable funding pattern.

Part B of Title II authorizes the Secretary to make grants to and enter into contracts with various institutions to train educators who will work in schools serving Indians and to improve the qualifications of persons presently so engaged. Preference to Indians would be given in determining grant recipients. This part authorizes $10,000,000 to be appropriated for the fiscal year after enactment and $15,000,000 for each of the next two fiscal years. We view Part B as duplicative of existing authority under the Snyder Act and therefore recommend against its enactment.

Part C authorizes the Secretary to enter into contracts with State education agencies or school districts involving the construction, renovation, or acquisition of facilities for Indian education in school districts on or near Indian reservations. Authority for construction of public schools which educate Indian children is contained within the authority of the Department of Health, Education, and Welfare to render impact aid to public school districts (Act of September 30, 1950 (64 Stat. 1100), as amended). We defer to the views of the Department of Health, Education, and Welfare on this Part.

Part D establishes an Indian youth intern program for summer employment. Since there is comparable authority under existing law, we recommend against enactment of this Part.

Part E provides funds to the Secretary of the Interior for grants and contracts with appropriate nonprofit institutions and agencies for research and development in the fields of Indian education. The authorization for Part E is $2,000,000 for the first fiscal year and $3,000,000 for each of the next two fiscal years. We recommend that this Part not be enacted because it would duplicate authority provided by the Snyder Act.

Part F of S. 1017 directs the Secretary to present to the 94th Congress several programs which would show how to meet the educational needs of the following Indian groups: adults, persons desirous of technical education, young children, gifted and handicapped Indians aged 3 to 21 years, and those desirous of higher education. This Part would appropriate $750,000 to carry out its purposes. We recommend that Part F not be enacted because the development and evolution of these programs is the continuing responsibility of the Interior Department and is currently authorized.

Part 6 provides general standards and requirements related to Title II. We recommend deletion of section 219 to make this part consistent with the above recommendations.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

[redacted] Secretary of the Interior

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, D.C. 20510

93D CONGRESS
1ST SESSION

S. 1340

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. JACKSON (for himself, Mr. ABOUREZK, and Mr. FANNIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits, for employees of the Government of the United States who transfer to Indian tribal organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Federal Employees Indian Tribal Organization Transfer Act".

SEC. 2. (a) Notwithstanding other statutes, Executive

orders, or regulations, an employee serving under an appointment not limited to one year or less who transfers on or before December 31, 1981, to an Indian tribal organization in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if he and the Indian tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (compensation for work injuries) of title 5, United States Code, and for this purpose his employment with the Indian tribal organization is deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the Inidan tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the Indian tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited

against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (retirement) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the Indian tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time he transfers to an Indian tribal organization remain to his credit for retirement purposes during covered service with the Indian tribal organization.

(3) To retain coverage, rights, and benefits under chapter 97 (life insurance) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the Indian tribal organization are currently deposited in the Employees' Life Insurance Fund (section 8714 of title 5, United States Code); and the pe-

riod during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

(4) To retain coverage, rights, and benefits under chapter 89 (health insurance) of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the Indian tribal organization are currently deposited in the Employees' Health Benefits Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

(5) To be reemployed within thirty days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if he transferred at the time such activity was transferred to the Indian tribal organization or within ninety calendar days after such a transfer of activities and (A) he makes application for reemployment not later than five years after the date of his transfer to the Indian tribal organization, or (B) the activity is transferred back to the Government of the United States. On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the agency from which he transferred. On reemployment, the agency shall restore his sick

leave account, by credit or charge, to its status at the time of transfer. If, at the time of transfer to the Indian tribal organization the employee received a lump-sum payment for annual leave and he is reemployed under this paragraph within one year from the date of transfer, he shall refund to the agency from which he transferred the amount of the lump-sum payment, and the leave covered by the said lump-sum payment shall be restored to his account. If an employee is reemployed under this paragraph, the period of his service with an Indian tribal organization and the period necessary to effect his reemployment are deemed creditable service for all appropriate civil service employment purposes.

(b) During a transferred employee's period of service with an Indian tribal organization, that organization shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of subsection (a) of this section.

SEC. 3. An employee who transfers to an Indian tribal organization under section 2 of this Act and the Indian tribal organization to which he transfers shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of subsection (a) of section 2 of this Act before the date of his transfer to the Indian tribal organization. An employee who transfers to an Indian tribal organization under section 2 of this Act shall continue to be

entitled to the benefits of section 2 of this Act if he transfers to the employment of another Indian tribal organization to perform service in activities of the type described in section 2 of this Act.

SEC. 4. For the purposes of this Act—

(a) "employee" means an employee as defined in section 2105 of title 5, United States Code;

(b) "Indian tribal" includes, but is not limited to, Alaska Native; and

(c) "Indian tribal organization" includes, but is not limited to, Indian tribal governing bodies, their agencies and instrumentalities, and corporations and other organizations which are controlled by (1) one or more of the described Indian tribal governing bodies or their agencies or instrumentalities, or (2) by a board of directors elected or selected by one or more of the described Indian tribal governing bodies or their agencies or instrumentalities.

SEC. 5. The President may prescribe regulations necessary to carry out this Act and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

SEC. 6. This Act shall be effective sixty days after the date of its enactment.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 1973

Dear Mr. President:

Enclosed is a proposal "To retain coverage under the laws providing employee benefits, such as compensation for injury, retirement, life insurance, and health benefits for employees of the Government of the United States who transfer to Indian tribal organizations to perform services in connection with governmental or other activities which are or have been performed by Government employees in or for Indian communities, and for other purposes."

We recommend that the proposal be referred to the appropriate committee for its consideration, and that it be enacted.

This proposal is a companion to our proposal that authorizes Indian tribes to assume control and operation of programs and services now rendered for them by the Federal Government. This proposal allows civil service employees to transfer with the program or service and retain the coverage that they now enjoy as civil servants and also gives them preferential reemployment rights for a period of five years. In most instances, where programs or services are transferred to an Indian tribal organization, the organization will request that certain employees who are operating the program or service be transferred with it. By enabling employees to retain all of their civil service benefits, this proposal will be an important factor in encouraging those employees to make a transfer to an Indian tribal organization, thus lending continuity to the programs and services transferred. We believe that without the opportunity for continuity in the operation of transferred programs, as provided in this proposal, most if not all such transfers would be doomed to failure.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

John C. Whitaker

Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

SECTIONAL ANALYSIS OF PROPOSAL

Section 1 gives the Act the name of the "Federal Employees Indian Tribal Organization Transfer Act."

Section 2 entitles a federal employee who transfers to an Indian organization to carry out a federal program to retain the following federal benefits, if agreed upon by him and that organization:

(1) workmen's compensation rights, except that payments made by the tribal organization shall be deducted from the compensation due from the federal government;

(2) retirement benefits, provided that necessary payments continue to be made to the Civil Service Retirement and Disability Fund;

(3) life insurance benefits, provided that necessary payments continue to be made to the Employees' Life Insurance Fund;

(4) health insurance benefits, provided that necessary payments continue to be made to the Employees' Health Benefits Fund;

(5) the entitlement to be reemployed by the federal government in a comparable position if he makes application for transfer not later than 5 years after transferring to a tribal organization, and him time spent with the tribal organization shall be credited with respect to all appropriate civil service employment purposes.

During a federal employee's sojourn with a tribal organization, that organization shall deposit in the appropriate funds the payments necessary with respect to benefits numbered 2, 3, and 4, described above.

Section 3 directs a transferring federal employee and the Indian organization to which he transfers to choose beforehand whether or not to retain benefits numbered 1, 2, 3, and 4, described above.

Section 4 contains definitions.

Section 5 authorizes the President to prescribe necessary regulations.

Section 6 declares that the Act shall take effect 60 days after enactment.

93D CONGRESS
1ST SESSION

S. 1342

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. JACKSON (for himself, Mr. ABOUREZK, and Mr. FANNIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To amend Acts entitled "An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", and "To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458), be amended to read as follows:

"That the Secretary of the Interior be, and hereby is, authorized, in his discretion, to enter into a contract or contracts with any State or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, or with any Indian tribe, band, group, or community, recognized by the Secretary, for education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians, through the agencies of the State, tribe, band, group, or community, or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agriculturai assistance, and social welfare, including relief of distress, of Indians in such State."

SEC. 2. The Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267) is amended—

(a) by redesignating sections 4, 5, 6, and 7 as sections 5, 6, 7, and 8, respectively.

(b) by adding after section 3 the following:

"SEC. 4. That the Secretary of Health, Education, and Welfare is authorized to contract with any Indian tribe, band, group, or community to carry out all functions, au-

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thorities, and responsibilities conferred upon him by this Act, in accordance with the Act of June 4, 1936 (49 Stat. 1458)."

(c) by adding a new section 9 at the end of the Act of August 5, 1954 (68 Stat. 674), as amended, as follows:

"SEC. 9. In accordance with section 214(d) of the Public Health Service Act (42 U.S.C. 215(d)), upon the request of any Indian tribe, band, group, or community, personnel of the service may be detailed by the Secretary for the purpose of assisting such Indian tribe, band, group, or community, in work related to the functions of the service."

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Dear Mr. President:

Enclosed is a proposal "To amend Acts entitled 'An Act authorizing the Secretary of the Interior to arrange with States or Territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes', and 'To transfer the maintenance and operation of hospital and health facilities for Indians to the Public Health Service, and for other purposes' and for other purposes."

We recommend that the proposal be referred to the appropriate committee and that it be enacted.

In his Indian message of July 8, 1970, President Nixon emphasized the need for Johnson-O'Malley funds, which are used to help Indian students, to be expended in accordance with the problems and desires of Indians. The President proposed that this goal be reached by amending the Johnson-O'Malley Act (48 Stat. 596, as amended by 49 Stat. 1458), to authorize the Department of the Interior to channel funds appropriated under the Act directly to Indian tribes and communities. The amendment proposed in section 1 of our proposal will carry out this Presidential request. This amendment will add to the present authority of the Secretary of the Interior to contract with State and local institutions, new authority to contract directly with Indian tribes, bands, groups, or communities who run their own educational institutions, thus enabling the Secretary to arrange for direct Indian involvement in carrying out his responsibilities for Indian education, agricultural assistance, and social welfare. This new authority will be exercised in conjunction with President's directive that the Department make every effort to ensure that Johnson-O'Malley funds which are presently directed to public school districts are actually spent to improve education of Indian children in those districts.

The same authority to contract directly with Indians -- although in the area of Indian health -- will be given to the Secretary of Health, Education, and Welfare by virtue of the amendments in section 2 of our proposal. (Responsibility for Indian health was transferred from the Secretary of the Interior to the Secretary of Health, Education and Welfare by Public Law 568 of the 83rd Congress.) In both cases the amendments allowing contracting to take place directly with Indian tribes consist of inserting a variation of the phrase "any Indian tribe, band, group, or community" in the appropriate place in the appropriate act. The Secretary of Health, Education, and Welfare

will also be given authority to detail personnel from the Public Health Service to Indian groups who need aid in carrying out health-service contracts.

The Office of Management and Budget has advised that this proposal is in accord with the program of the President.

Sincerely yours,

Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D.C. 20510

Enclosure

SECTIONAL ANALYSIS

Section 1 amends the Johnson-O'Malley Act to add the term "or with any Indian tribe, band, group, or community, recognized by the Secretary" and to strike the word "Territory" wherever it appears in the first section of the Act, as being no longer applicable to the Act. The addition of the phrase set out above means that Indians would join the public and private groups with which the Federal Government may contract for the carrying out of Federal responsibilities in education, agricultural assistance, and social welfare.

Section 2 amends the Act of August 5, 1954, by adding two new sections and renumbering other sections accordingly. The first added section, to be the new section 4, authorizes the Secretary of Health, Education, and Welfare to contract with "any Indian tribe, band, group, or community" to carry out his health responsibility to the Indians. The second added section, to be the new section 9, gives the Secretary of Health, Education, and Welfare the authority to detail Public Health Service personnel for the purpose of assisting an Indian tribe, band, group, or community in carrying out Indian health functions.

93D CONGRESS
1ST SESSION

S. 1343

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. JACKSON (for himself, Mr. ABOUREZK, and Mr. FANNIN) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. For the purposes of this Act—

(a) "Indian tribe" and "Indian community" means an Indian tribe, band, nation, or Alaska Native Community for which the Federal Government provides special programs and services because of its Indian identity. The terms may also include the reservation or other land area in which the

tribe or community is located and tribally recognized communities within a reservation.

(b) "Indian tribal organization" includes the elected governing body of an Indian tribe or community. The terms may also include legally established organizations which are controlled by one or more such bodies or which are controlled by a board of directors elected or selected by one or more such bodies.

(c) "Secretary" means the Secretary of the Interior or the Secretary of Health, Education, and Welfare, as appropriate.

(d) "Programs" and "services" include the local activities and undertakings of the Bureau of Indian Affairs of the Department of the Interior and the Indian health service program of the Public Health Service of the Department of Health, Education, and Welfare serving Indian communities and the related facilities, equipment, supplies, materials, and budget. Such other programs as may be designated by a Federal department or agency responsible for the administration thereof may also be transferred pursuant to this Act.

SEC. 2. (a) Notwithstanding any other provisions of law, if an Indian tribe or community, after consultations with the Secretary requests that it be given the control or operation of a program or service administered by the Secretary, the Secretary shall within one hundred and twenty days from

such request, or such later date as may be agreed to by the Secretary and the organization, transfer such control or operation to the Indian tribal organization: *Provided, however,* That no such transfer may be made unless the Secretary has determined that the tribes or communities involved have obtained general public liability insurance, motor vehicle insurance, and other appropriate insurance which shall provide coverage to the tribes or communities in amounts which shall be comparable to the minimum insurance coverage carried by other persons or organizations in the same general areas performing similar activities as determined by the Secretary. Such immunity to suit as a tribe or community which assumes control of a program pursuant to this section may have shall be waived with respect to suits arising out of its operation of that program but only to the extent of the coverage required by the Secretary. Any request made pursuant to this subsection must be accompanied by a plan for carrying out the program or service requested. A tribe or community assuming such control may enter into agreements to carry out all or any part of such program or service. A transfer under this subsection shall stipulate the retrocession procedures provided for in subsections (d) and (e) of this section which are designed to safeguard the residual trust responsibilities of the Federal Government. In the case where a requested program or service is serving the mem-

bers of more than one Indian tribe or community, the requested transfer of such service or program must be approved by each tribe or community served by said program or service before any transfer shall be required under this Act.

(b) During the period preceding or immediately subsequent to any transfer required by this Act, the Secretary shall provide assistance, other than financial, on the request of the Indian tribal organization, to insure an orderly transfer of the control and operation of the program or service involved.

(c) For each fiscal year during which an Indian tribal organization engages in an activity pursuant to any program or service transferred to it under this Act, the Indian tribal organization shall submit a report to the Secretary including an accounting of the amounts and purposes for which Federal funds were expended and information on conduct of the program or service involved. The reports and records of such Indian tribal organizations with respect to such program or operation shall be subject to audit by the Secretary and the Comptroller General of the United States.

(d) Should an Indian tribe or community request retrocession to the Secretary of any program or service which was assumed by the Indian tribal organization under this Act, such retrocession shall be effective upon a date specified by the Secretary within one hundred and twenty days of such

indication or such later date as may agreed to by the Secretary and the organization. Such retrocession will not prejudice the tribe's or community's right to again assume control of a service or program at a later date.

(e) In any case where the Secretary determines that any program or service assumed by an Indian tribal organization is being accomplished in a manner which involves (1) the violation of the rights or endangers the health, safety, or welfare of individuals served by such program or service, or (2) gross negligence or mismanagement in the handling or use of Federal funds provided to the organization pursuant to this Act, the Secretary may, under regulations prescribed by him, after providing notice and hearing to such Indian tribal organization, reassume control or operation of such program or service if he determines that the organization has not taken corrective action as prescribed by the Secretary. The Secretary may retain control of such program or service until such time as he is satisfied that the violation of rights, endangerment of health, safety, or welfare, or the gross negligence or mismanagement which necessitated the reassumption has been corrected as indicated by the plan accompanying a request by an Indian tribal organization to again take control or operation of such program or service.

(f) In the allocation of available funds, Indian tribal

organizations that assume control or operation of programs or services under the provisions of this Act, or retrocede control or operation to the Secretary, shall be treated in the same manner as they would have been if the control or operation had been maintained continuously by the Federal Government.

SEC. 3. The Secretary is authorized, upon the request of any Indian tribe, band, group, or community, to detail any civil service employee serving under a career or career-conditional appointment for a period of up to one hundred and eighty days to such Indian tribe, band, group, or community for the purpose of assisting such Indian tribe, band, group, or community in its control or operation of a program or service transferred to it pursuant to this Act. The Secretary may, upon a showing by an Indian tribe, band, group, or community of a need for an employee detailed pursuant to this section, extend such detail for a period not to exceed one hundred and eighty days.

SEC. 4. The Act of August 5, 1954 (68 Stat. 674), is amended by inserting a new section 9, as follows:

"SEC. 9. In accordance with section 214(d) of the Public Health Service Act (42 U.S.C. 215(d)), upon the request of any Indian tribe, band, group, or community, personnel of the service may be detailed by the Secretary for the

purpose of assisting such Indian tribe, band, group, or community, in work related to the functions of the service."

SEC. 5. Nothing in this Act shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 1973

Dear Mr. President:

Enclosed is a proposal "To provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes."

We recommend that the proposal be referred to the appropriate committee for its consideration and that it be enacted.

In his Indian message of July 8, 1970, President Nixon expressed the rationale of this proposal:

> "For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.
>
> "This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency."

This proposal (a sectional analysis of which serves as the appendix to this letter) will enable any Indian tribe, band, group, or community to request and assume control of any program or service now extended to it by the Bureau of Indian Affairs of the Department of the Interior or the Indian health service program of the Public Health Service of the Department of Health, Education, and Welfare. The two program areas are the ones that deal most directly with Indian people.

President Nixon reaffirmed the need for this proposal in his March 1, 1973, message on Human Resources to the Congress.

If any Indian group decides it is willing and able to assume administrative responsibility for a service or program which is presently administered by the Bureau of Indian Affairs or Public Health Service,

it can request that such service or program be turned over to it. The only prerequisite that the group must meet is to obtain adequate insurance. The bill waives the group's immunity to suits arising out of its operation of a program only to the extent of this insurance. We believe that this condition is necessary to protect persons who may be injured or property which may be damaged in the carrying out of a program. Since Indian tribes would not otherwise be subject to suit, lack of insurance could work substantial injustice to innocent parties.

The turnover will be made after the tribe has consulted with the appropriate Department, has worked out a transfer plan with that Department, and has submitted that plan formally along with its request for the turnover. But it will be the Indian group whose decision will prevail. That is, if the Indians persist in their request, the program or service will be turned over to their control even if, in the judgment of the appropriate Department, they are not adequately equipped to operate that program or service. The transfer will be made subject to the right of the Indian group to retrocede any program or service to the appropriate Secretary. Such a retrocession would not prejudice the group's right to reassume control of any service or program at a later date.

In those instances where there is a question about the adequacy of the Indian group to control or operate the transferred service or program, the Secretary will monitor the program or service to be certain that the rights, health, safety and welfare of the Indians involved is not endangered. The proposal empowers the Secretary to move to reassume control of a service or program at any point where he thinks the health, safety or welfare of an Indian is jeopardized. The proposal contemplates that the Secretary will make every effort to assist Indian groups in their efforts to assume the control and operation of the program or service. The proposal will allow the Secretary to detail to the Indian group those civil servants who, although not transferring with the service or program to Indian employment (under a companion to this proposal), might be useful during the transition period. Such employees could be detailed for a period of 180 days, with the possibility of extending their assignment for an additional 180 days. The proposal also authorizes the detailing of Public Health Service employees to Indian tribes and groups.

The proposal makes it clear that there will be no discrimination against those tribes who assume control or operation of a service or program. In particular, the proposal assures Indians that any transferred program or service will be given the same consideration in the allocation of budget funds as it would have received if it had continued under the control of the Federal government.

The last section of the proposal provides that nothing in the proposal shall be interpreted as authorizing or requiring the termination of any

existing trust responsibility of the United States with respect to Indians. This provision makes it clear that even though an Indian group assumes the control and operation of a program or service, the Federal government will retain its ultimate responsibility for that program or service and will maintain its trust relationship with that Indian group.

The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

Sincerely yours,

John C. Whitaker

Acting Secretary of the Interior

Honorable Spiro T. Agnew
President of the Senate
Washington, D. C. 20510

Enclosures

APPENDIX

SECTIONAL ANALYSIS OF PROPOSAL

Section 1 contains definitions.

Section 2 provides that, notwithstanding any other provisions of law, if an Indian tribe or community requests that it be given the control or operation of a program or service administered by the Federal Government, the Secretary shall turn over to that tribe or community, within 120 days after the request or such other period as may be agreed to, the control and operation of such program or service. The only prerequisite that the group must meet is to obtain adequate insurance. The bill waives the group's immunity to suits arising out of its operation of a program only to the extent of this insurance. We believe that this condition is necessary to protect persons who may be injured or property which may be damaged in the carrying out of a program. Since Indian tribes would not otherwise be subject to suit, lack of insurance could work substantial injustice to innocent parties. Section 2 requires that the request made by the Indian tribe or community be accompanied by a plan for carrying out the service or program involved. It authorizes the tribe or community to enter into agreements to carry out all or any part of the transferred program or service. Such a transfer shall stipulate the retrocession provision provided for in a later subsection of this section.

In subsection (b) of section 2, the Secretary is required to provide assistance, other than financial, to any Indian tribal organization which requests it during the period preceding or immediately following a transfer made under this proposal.

Subsection (c) of section 2 requires that for each fiscal year during which an Indian tribal organization engages in the operation or control of a program or service transferred to it under the provisions of this proposal, it must report to the Secretary, such report to include an accounting of the amounts expended and the purposes for which Federal funds were expended. Subsection (c) opens reports and records of the Indian tribal organization maintained in connection with such program or operation for audit by the Secretary and Comptroller General.

Subsection (d) provides that should an Indian tribe or community request a retrocession to the Secretary of any program or service which it assumed pursuant to this proposal, such retrocession shall be effective within 120 days after such request or such later period as may be agreed to by the Secretary and the Indian

group. This subsection specifically provides that retrocession of any program or service will not prejudice the Indian tribe or community's right to again assume control of the service or program.

In subsection (e) of section 2, if the Secretary determines that any program or service assumed by an Indian tribe is being accomplished in a manner which would violate the rights or endanger the health, safety or welfare of individual Indians served by such program or service or that there has been gross negligence or mismanagement in the use of Federal funds provided pursuant to this proposal, the Secretary may reassume control of the program or service under such regulations as he may prescribe but only after providing notice and hearing to the Indian tribal organization involved. The Secretary is authorized to retain the service or program until he is satisfied that the problems causing him to reassume control of it have been corrected.

Subsection (f) of section 2 provides that in the allocation of funds for programs and services to Indians, those Indian tribal organizations which assume control or operation of programs or services pursuant to this proposal or which retrocede control or operation to the Secretary shall be treated in the same manner as if the control or operation of the program or service had been maintained continuously by the Federal Government.

Section 3 authorizes the Secretary, upon the request of any Indian group, to detail any Civil Service employee for a period of up to 180 days to assist the Indian group in its control or operation of a program or service transferred pursuant to this proposal. This section also provides that the Secretary may, upon a showing of need by an Indian group for the continued services of the detailed employee, extend the detail of the employee for a period not to exceed 180 days.

Section 4 amends the Act of August 5, 1954, to enable physicians, nurses, and other health personnel of the Public Health Service to be detailed to tribes to assist them in taking over Federal programs or services.

Section 5 provides that nothing in this proposal shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians.

98-143 O - 73 -- 5

Senator ABOUREZK. The first witness, or panel of witnesses, this morning is headed by Mr. Frank Carlucci, who is Under Secretary of the Department of Health, Education, and Welfare. We are happy to have you here this morning, and I would like you to introduce your panel that you have with you, if you would, please.

STATEMENT OF HON. FRANK CARLUCCI, UNDER SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY JOHN OTTINA, U.S. COMMISSIONER OF EDUCATION-DESIGNATE; FRANK E. SAMUEL, JR., DEPUTY ASSISTANT SECRETARY FOR CONGRESSIONAL LIAISON; CHARLES M. COOKE, JR., DIRECTOR, OFFICE OF SPECIAL CONCERNS; EMERY A. JOHNSON, DIRECTOR, INDIAN HEALTH SERVICE; AND SIDNEY EDELMAN, ASSISTANT GENERAL COUNSEL, PUBLIC HEALTH SERVICE DIVISION

Mr. CARLUCCI. Thank you, Mr. Chairman. To my left is Mr. Charles Cooke, who is Director of the Office of Special Concerns in HEW. To his left is Mr. Frank Samuel, who is Deputy Assistant Secretary for Congressional Liaison. To his left is Sidney Edelman, Assistant General Counsel in the Public Health Service Division. To my right is Dr. John Ottina, who is our designee for Commissioner of Education, and to his right is Dr. Emery Johnson who is Director of the Indian Health Service.

Senator ABOUREZK. You may, if you would like to give your testimony, proceed.

Mr. CARLUCCI. Mr. Chairman, it is a pleasure to appear to testify on S. 1017, S. 1340, S. 1342, and S. 1343, which seek to assure the Indian people the right of self-determination.

As you know, the administration is deeply committed to Indian self-determination. The President stated in his message to Congress, on July 8, 1970, transmitting his "Recommednation for Indian Policy":

> For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.
>
> This situation would be reversed. In my judgment, it should be up to the Indian trible to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a Federal agency.

The Department is vitally interested in the enactment of legislation which would promote and encourage further self-determination for the Indian people to attain the ultimate goal of "Indian solutions to Indian problems."

As we advance the priority of self-determination, however, we must also be sensitive to the need for maintaining Federal support and concern for the Indian people. As we strengthen the Indian's sense of autonomy, we must be sure not to threaten his sense of community and tribal life. That means making it clear to Indians that they can become independent without losing their unique relationship with the

Federal Government and that self-determination and the assumption of control of HEW programs and services by Indian tribes represents a reinforcement rather than a termination of this unique relationship.

Before I discuss the four bills under consideration I would like to quickly highlight a few of the things being done under existing mandates to advance Indian self-determination. These actions include:

Over the years, Office of Education assistance benefiting Indian children and adults has been substantial. In fiscal year 1973 it is estimated that $87.3 million in OE obligated funds will benefit Indians. Included in this amount is $24.4 million under title I of the Elementary and Secondary Education Act for the special needs of educationally deprived children; $32.5 million in payments to local school districts under the impact aid legislation. Public Law 874; $874.8 million for school construction under section 14 of Public Law 815; $6.1 million in student financial aid; $713,000 in special projects for adult education; and $2.7 million in teacher training projects.

The Indian Health Service has made notable progress in improving the delivery of health services to American Indians and Alaskan Natives since 1955 through the growing participation of the Indians and Alaskan Natives in the planning, implementation, and evaluation of health service programs. Some examples of tribally managed health efforts include the operation of community health services activities such as alcoholism projects, family planning programs, maternal and child health programs, and health screening and nutrition programs. Progress is illustrated, also, by the development of the community health aid program in Alaska, and the community health representative program in other States which enable tribal groups to directly provide health services in their communities by employing workers trained by the Indian Health Service. The Indian tribes are now a major employer of health service workers formerly in the Indian Health Service. These tribal employees now number about one-fifth of the health workers on reservations.

Another indication of the progress toward Indian self-determination in the Department is the emergence of local, areawide, and national Indian health boards. These groups, formed at the Indians' initiative, advise the Indian Health Service on every aspect of health program management.

To advance the President's policy of Indian self-determination, the administration on March 15 sent to Congress several bills which together make up a comprehensive legislative program. Three, S. 1343, S. 1342, and S. 1340, of these are being considered by the subcommittee this morning, and I would like to describe them briefly now.

S. 1343 would accomplish the goals of the self-determination by requiring the Secretaries of the Interior and HEW to transfer to an Indian tribe, at its request, control and operation of programs and services now under the Bureau of Indian Affairs of the Department of the Interior and the Indian Health Service of the Department of Health, Education, and Welfare.

S. 1342 would amend the Johnson-O'Malley Act and the act of August 5, 1954, which transferred responsibility for Indian hospitals and health facilities to the Public Health Service. It would provide the Secretary of the Interior and the Secretary of HEW with the much-

needed authority to contract with any Indian tribe, band, group, or community to carry out any of the programs under those acts.

S. 1340 would provide for continued fringe benefits (such as compensation for injury, retirement, life insurance, and health benefits) for Federal employees who transfer to Indian tribal organizations to perform services they formerly performed as Government employees.

We view the contract authority contained in S. 1342 as an interim measure, allowing us to contract out to an Indian tribe or organization responsibility for those functions the tribe feels itself sufficiently experienced to handle. On the other hand, as a tribal organization determines that it is capable of assuming complete control over one or more of its programs, we want to be able to guarantee to that organization that, by law, it would be able to do so. For this reason, we urge the enactment of S. 1343, which would provide that authority, as a necessary complement to the contract authority provided in S. 1342.

In summary, these three bills would give the Indian people three levels of choice: One, contract with HEW to carry out the IHS programs; two, request the complete transfer of the programs to Indian control; three, allow those civil servants that the Indians wish to employ—in transferred programs—to retain certain benefits they had as Federal employees.

This three option approach would assure that if an impasse were reached in negotiations between HEW and an Indian tribe, the final determination of whether program control would shift to the Indians would rest entirely with the Indian tribe.

I should caution that we would not want the transfer authority we seek to be interpreted as a way for the Federal Government to terminate its proper responsibilities to the Indian people. To begin with, the transfer would only occur at the request of an Indian tribe or community. If the tribe believes that it is not yet ready to assume the responsibilities which would accompany transfer, it could contract under S. 1342 to assume whatever responsibilities it felt ready to assume. However, if a tribe wants to remain at status quo with the Federal Government being fully responsible for carrying out the programs, that too would be its option. In addition, S. 1343 contains a provision to assure continuing Federal concern after program transfers occur.

S. 1343 also gives the Secretary authority, after providing notice and hearing to the tribes, to reassume control or operation of the program if he determines that the tribal organization is operating or conducting the program in a manner involving: One: a violation of the rights or endangering the health, safety and welfare of the individual Indians, or two: gross negligence or mismanagement of Federal funds. We do not view this safeguard as a punitive mechanism. We see it as a necessary protection for Indian people. The bill provides that tribes may resume their operations as soon as the Secretary is satisfied that the deficiencies in tribal operations have been corrected.

S. 1343 assures that the funding of the programs transferred to the tribe would be at the level stipulated in section 2(f) "As if the control or operation has been maintained continuously by the Federal Government." This assures the tribe a continuity of financial support. The tribes are more likely to opt for assuming control of their programs with this specific legislative provision to assure them that they will not get less funding by assuming control.

While the conditions for assuming operating responsibility of the various Indian programs should be made as easy and as flexible as possible, the Federal Government nevertheless has a responsibility to assure that programs are being operated and administered in keeping with requirements of Federal law. S. 1343 assures this by requiring the tribes to submit annual reports to the Secretary including an accounting of the amounts and purposes for which Federal funds are expended.

Although S. 1342 provides contract authority, and therefore does not specifically refer to the safeguards contained in S. 1343, we would provide similar safeguards in the contract whenever the situation warranted.

I would now like to turn to S. 1017 which you, Mr. Chairman, and Senator Jackson have introduced.

While we prefer enactment of S. 1342 and S. 1343, we believe that enactment of certain provisions of S. 1017 as cited would be substantially consistent with the administration's policy of self-determination for Indians.

However, we have serious problems with portions of title II of S. 1017. This title would give to the Secretary of the Interior authority to:

Enter into contracts with States and their political subdivisions or Indian tribes and organizations for the purpose of educating Indians in public schools;

Make grants and contracts to train education professionals to work with Indians;

Enter into contracts with State and local education agencies for construction, acquisition, [illegible]enovation of facilities in school districts on or near Indian reservat[illegible]s;

Establish a summer em[illegible]ment program for Indian youth;

Make grants and contr[illegible]or research, surveys, and demonstrations in the field of Indian education; and

Provide a report to Congress in March 1975 proposing programs to meet the needs of Indian people in areas of adult, vocational, early childhood, gifted and handicapped, career, and higher education.

Our figures also show that nearly three-fourths—73 percent—of the children of native Americans residing on federally recognized reservations attend public schools operated by State and local agencies. Thus, the education needs of native Americans are being met substantially by our public school system.

Basically, part A accepts the administration's recommendation, as proposed in S. 1342, to expand the contracting authority of the Department of the Interior to include Indian tribes and organizations for educational services and fills in the present broad provisions of the Johnson-O'Malley Act with more detailed legislative specifications. We defer to the Department of the Interior for discussion on the merits of part A of title II.

However, duplication of existing programs benefiting public schools that educate Indian children is encountered in part C of title II. Public Law 815, 81st Congress, now authorizes a program for construction for school districts educating Indian children who reside on Federal property. The administration budget calls for an increase in the Public Law 81-815 program and under which construction of

facilities to meet the needs of Indian children is a priority. Approximately $4.8 million will be obligated for this purpose in fiscal year 1973.

With regard to parts B, D, E, and F, our position is that there is sufficient existing authority under the Snyder Act [42 Stat. 208, act of Nov. 2, 1971] to allow for the activities listed under these parts.

In conclusion, we believe that enactment of title I and part A of title II of S. 1017 would provide useful authority for the development of Indian self-determination as proposed by the administration.

Regardless of which bills are adopted, however, the manner in which its provisions would be carried out by the Federal agencies involved is critical. The development of implementing regulations and guidelines will determine the success or failure of any measure. We believe that it is the right of the Indian people to be involved in the programs that affect their lives, and we intend to consult with Indian tribal representatives in developing such regulations and guidelines to assure that the methods developed for carrying out the provisions of the bill are consistent with the desires and needs of the tribes affected.

Mr. Chairman, we believe that it is important as we work toward our common objective, Indian self-determination, to bear in mind the following statement from the President's message to Congress of July 8, 1970:

> Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

That concludes my prepared testimony, Mr. Chairman. I and my colleagues are ready to answer any questions you may have.

Senator ABOUREZK. Thank you, Mr. Carlucci.

I want to ask if you think that the authority for taking over a school board by the Indian people should rest only with a recognized tribe, or should other Indian groups in a community, not necessarily a tribe, be allowed to take over these schools?

Mr. CARLUCCI. Well, the legislation, as we have proposed it, would authorize the federally recognized tribes to do this. I think if you extend it to urban Indian groups, you get into a very complex administrative situation.

Senator ABOUREZK. There aren't to my knowledge, any schools being operated by the BIA at this time in urban areas. Can somebody correct me on that? Mr. Kyl is here. So far as I know there are no urban schools being operated by the BIA, is that correct?

Mr. KYL. Not in urban areas.

Senator ABOUREZK. I am thinking not so much of an urban school. I am think more of a school that is within a reservation but is in essence run by and has a vested interest by the community rather than the tribal government. Let me give you an example. I spoke at a commencement at the Kyle, South Dakota, school, just about 3 days ago; Kyle is on the Pine Ridge Reservation. It is a rather sprawling reservation as some are in Arizona as well. The Kyle school is run by an Indian schoolboard, at this time. I am not sure what connection it has with the tribe, but I do know that Kyle considers itself as a distinct community, as does Wounded Knee, by the way.

As a matter of fact, the people out there pretty much resent politicians or Government officials coming out and staying just in Pine Ridge. They are always complaining about the fact that people seem to forget there are other communities.

In that particular circumstance, if you vested the power in the tribe to run these schools out there, I think you would see a lot of political difficulties in the Kyle area and Wounded Knee area, and so on.

I just wonder if there might not be a better way to do it, to allow Indian communities to organize and elect their own school boards, to run the schools out in those areas?

Mr. CARLUCCI. Mr. Chairman, I would be glad to examine that question. My initial reaction is that it would be a very complex, a very complex thing to administer. I don't know what kind of guidelines you would lay down. Furthermore, where you do have recognized tribal government I think it is important that we deal with that tribal government, but if you would like, I would be glad to look into it in more detail and submit something for the record.

Senator ABOUREZK. I would appreciate it, because it disturbs me that we might see this kind of political difficulty arise, and I just wonder if you might not look into some of the Navajo Tribes, for example.

Mr. Kyl.

Mr. KYL. Of course, you have spoken of one of the difficulties of the government of the Oglala-Sioux, where various communities do regard themselves as independent. But as a matter of fact, we do now operate in some instances, for instance at Wind River, in the fashion that is suggested here. The only necessity is that there be a legal subdivision of the tribe or group endowed by the tribe with the authority.

Senator ABOUREZK. In other words, so the approval does come from the tribe, but the tribe doesn't necessarily pick the school board.

Mr. KYL. That is exactly right.

Senator ABOUREZK. In view of that, then, would the language of this legislation allow that same thing to continue?

Mr. CARLUCCI. I would defer to the Department of the Interior on that, Mr. Chairman.

Mr. KYL. Yes, it would.

Senator ABOUREZK. That is, on S. 1017, now?

Mr. KYL. Yes, sir.

Senator ABOUREZK. We would like to get the statement on the record for legislative history. You believe that the language of S. 1017 does allow individual communities to run their own school boards within the framework of the tribal government?

Mr. HAWKINS. Yes, sir, that is correct.

Senator ABOUREZK. I guess you won't need to investigate that any more, Mr. Carlucci.

If the provisions of title II duplicate those of title IV of the Education Amendments of 1972, how do you square this decision in light of the President's request for recision of title IV funds?

Mr. CARLUCCI. I think we have to make a distinction, Mr. Chairman, between authorizing legislation and the President's budget. That fact, that you duplicate authorizing legislation, does not mean in any way that the President's budget would be altered. One is a money issue and the other is an authorizing issue.

Let me ask Dr. Ottina to comment specifically.

Dr. OTTINA. Regarding the Indian Education Act of the Education Amendments of 1972, as you may recall, we have commented in other Senate hearings, that the Indian Education Act itself duplicate substantially our present authorizing legislation in the Office of Education. Our position here would be basically that this new proposed legislation would duplicate something that already duplicates something for which we have authority.

Mr. CARLUCCI. I might add, Mr. Chairman, that we are accepting applications under that program right now and appropriate applications will be funded.

Senator ABOUREZK. In other words, that is per the court order to release the money?

Mr. CARLUCCI. I don't know if there was a specific court order.

Dr. OTTINA. There was a court order, but we were well into the implementation process before the court order to implement that program was rendered. While we are talking about that, I would like to speak further, for just a moment.

In Mr. Carlucci's testimony he indicated about $87 million of programs which the Office of Education was spending was benefiting the Indian children and Indian adults. These are the programs already in place and does not include the Special Indian Education Act that we are just now referring to, so now there are $18 million in addition to that $87 million that would be spent in 1973 for the benefit of Indians.

Mr. CARLUCCI. I might also note, Mr. Chairman, that we feel that these provisions of title II would duplicate authorities that are in the Snyder Act as well.

Senator ABOUREZK. I wonder if you would estimate for me the number of Indian children served under Public Law 81-874, and how many are category A students and how many are category B?

Dr. OTTINA. Yes; I do have those numbers with me, Mr. Chairman. The category A amount of money is about $25.4 million and category B is about $1.9 million. My recollection, and I will be pleased to supply it for the record, is that there are totally about 60,000 Indian children, the majority of which would be part A, that are served by this combined act. I will break it down for the record.

Senator ABOUREZK. You have the exact figures somewhere?

Dr. OTTINA. We do have the exact figures somewhere.

Senator ABOUREZK. And you will provide those for the committee. Thank you.

[The figures referred to follow:]

Average daily attendance of Indian children on whom Public Law 81-874 funds are paid—1972-73 academic year

Sec. 3(a)	55,000
Sec. 3(b)1	6,000
Sec. 3(b)2	14,000

ADA is from 5 to 10 percent lower than membership.

Children who reside on Indian lands are eligible under section 14 of Public Law 81-815.

Senator ABOUREZK. Would you please tell the committee your views in general on the various provisions of title II of S. 1017? Do you have anything beyond your testimony?

Mr. CARLUCCI. I think that was covered in our testimony. Our principal concern is that it duplicates existing authorizing legislation.

Senator ABOUREZK. What would you consider to be the unmet construction cost of public schools serving Indian students from federally recognized tribes?

Mr. CARLUCCI. I don't know if we could put a dollar figure on that at this point, Mr. Chairman.

Dr. OTTINA. We were very much concerned, Senator, about that problem, and as Mr. Carlucci testified earlier, in 1973 we had earmarked a larger amount of money to be spent to fill some of these unmet needs, $4.8 million. Our 1974 plans called for an increase. In our budget preparation and testimony before the Appropriations Committee, we are asking for additional funds to be used for that purpose. The total would be about $6.8 million that would be spent for that purpose in 1974.

Senator ABOUREZK. That is for school construction?

Dr. OTTINA. Yes, sir; that would be under Public Law 815, which would be the construction of facilities.

Senator ABOUREZK. You aren't going to seriously contend that that is going to build very many schools?

Dr. OTTINA. No. It's going to certainly help the conditions but it does not, as you quite accurately point out, meet all of the needs. We do have on file with this office a list of all programs and all projects which have been submitted for Public Law 815, and I would be pleased if you would like to provide a list for the record of all of those projects which have been submitted to the Office of Education.

Senator ABOUREZK. In other words, you are offering to submit the backlog of requests for Indian construction?

Dr. OTTINA. Yes, sir, by school and by amount.

Senator ABOUREZK. We would be pleased to have that. Thank you.

[The information referred to follows:]

COMBINED PRIORITY LISTING SECTION 14 (a) AND (b)

Priority index	Number of applications per—		Estimated entitlement per—	
	Interval	Cumulative	Interval	Cumulative
100 and above	6	6	8, 202, 565	8, 202, 565
90 to 99.9	1	7	2, 304, 000	10, 506, 565
80 to 89.9		7		10, 506, 565
70 to 79.9	2	9	1, 939, 500	12, 446, 065
60 to 69.9	3	12	2, 175, 835	14, 621, 900
50 to 59.9	6	18	9, 131, 073	23, 752, 973
40 to 49.9	4	22	2, 407, 630	26, 160, 603
30 to 39.9	4	26	5, 162, 632	31, 323, 235
20 to 29.9	2	28	909, 712	32, 232, 947
10 to 19.9	9	37	4, 093, 438	36, 326, 385
0.1 to 9.9	2	39	1, 020, 817	37, 347, 202
Zero priority applications ranked in subpriority order:				
100		39		37, 347, 202
90 to 99.9		39		37, 347, 202
80 to 89.9		39		37, 347, 202
70 to 79.9	1	40	42, 000	37, 389, 202
60 to 69.9		40		37, 389, 202
50 to 59.9	1	41	450, 000	37, 839, 202
40 to 49.9	2	43	219, 506	38, 058, 708
30 to 39.9		43		38, 058, 708
20 to 29.9	2	45	582, 556	38, 641, 264
10 to 19.9	1	46	337, 600	38, 978, 864
0.1 to 9.9	6	52	2, 011, 604	40, 990, 468
0	2	54	326, 400	41, 316, 868
Tentatively ineligible	2	56	13, 969, 511	55, 286, 379

ORDER OF PRIORITY INDEXES AND FUNDS NEEDED—SUBSECS 14 (a) AND (b)

Project No.	Applicant	Priority		Funds needed	
		Tentative	Firm	Tentative	Firm
NEBR-73-C-3001	Knox Co. Pub. S.D., Niobrara		200.0		968,000
N. MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Navajo Waiver).	158.9		463,125	
ARIZ-73-C-1403	Sacaton C.S.D. No. 18[1] (68/70/72)		130.9		3,382,470
MONT-72-C-2001	H.S.D. No. 55, Brockton		128.8		1,000,000
KANS-72-C-404	Powhatan Unif. S.D., No. 510		113.0		600,290
ARIZ-73-C-904	Monument Valley H.S.D.[1] (1971)		100.4		1,788,680
ARIZ-73-C-607	Kayenta E.S.D. No. 27[1] (1970)		96.0		2,304,000
N. MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Thoreau—Waiver).	79.0		1,850,000	
MINN-69-C-403	I.S.D. No. 707, Nett Lake		78.9		89,500
WASH-72-C-403	Taholah Sch. Dist. No. 77[1] (1971)		67.9		733,835
ARIZ-71-C-517	Indian Oasis S.D. No. 40[1] (1970)		63.9		1,285,000
ARIZ-71-C-805	Union E.S.D. No. 62		61.6		117,000
N. MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Tohatchi Waiver).	59.6		1,050,000	
ARIZ-73-C-902	Whiteriver E.S.D. No. 20[1] (1972)		59.4		987,000
ARIZ-70-C-16	Yuma S.D. No. 27, Parker[1] (1969)		56.4		1,302,646
MONT-73-C-14	Browning E.S.D. No. 9		51.6		1,092,000
ARIZ-72-C-1001	Apache Co. S.D. No. 19, Ganado	51.2		4,180,427	
ARIZ-73-C-413	Alchesay H.S.D.[1] (1972)		50.3		519,000
ARIZ-73-C-14	Northern Yuma Co. U.H.S.D		45.9		415,600
MINN-71-C-401	Redlake S.D		44.0		773,280
S. DAK-71-C-1801	Waubay I.S.D		42.8		318,750
N. MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Crown Point W.).	42.6		900,000	
MONT-68-C-404	Lodge Grass E.S.D No. 27		38.2		152,000
N. MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Tse Bonito Waiver).	34.4		162,500	
WASH-71-C-25	Clallan Co. S.D	32.2		667,705	
ARIZ-73-C-16	Yuma Co. S.D. No. 27, Parker	31.4		4,180,427	
MONT-70-C-1801	Harlem H.S.D		29.6		159,712
N.MEX-73-C-402	Gallup-McKinley Bd. of Ed. (Towa Yallane Waiver).	26.2		750,000	
KANS-70-C-1802	Mayetta S.D		18.2		130,000
UTAH-72-C-401	Unitah S.D.[1] (1970)	15.0		916,000	
IOWA-69-C-1701	C.S.D. of South Tama Co		13.8		219,800
WASH-71-C-44	Wapato S.D. No. 207		13.5		456,750
OREG-70-C-13	Jefferson Co. S.D		13.1		226,000
CALIF-71-C-619	Bishop Union S.D		12.0		102,690
MONT-69-C-15	Blaine Co. S.D. No. 50		11.6		289,168
ARIZ-72-C-414	Tuba City E.S.D.[1] (1971)		10.8		1,638,750
N.DAK-72-C-503	New Town Pub. S.D. No. 1	10.2		114,280	
MONT-71-C-7	Ronan S.D	9.0		580,817	
IDAHO-73-C-5	Blackfoot S.D. No. 55	.8		440,000	
	ZERO PRIORITY APPLICATIONS—				
WYO-69-C-403	Mill Creek S.D. No. 14		[2] 75.5		42,000
WASH-72-C-1902	Mount Adams S.D.		[2] 53.2		430,000
NEV-69-C-701	Elko Co. S.D.		[2] 43.7		170,000
WASH-72-C-512	Inchelium S.D		[2] 40.2		49,506
MONT-68-C-1601	Lodge Grass H.S.D. No. 2		[2] 22.6		336,000
N.DAK-72-C-1901	Couture S.D	[2] 20.2		246,556	
S.DAK-73-C-3001	West River I.S.D. No. 18, Faith	[2] 17.2		337,600	
MONT-69-C-8	Harlem E.S.D. No. 12		[2] 9.3		210,000
N.MEX-69-C-406	Grants Mun. S.D		[2] 7.9		783,264
WASH-70-C-67	LaConner S.D. No. 311		[2] 7.0		91,440
MONT-70-C-13	Lame Deer S.D. No. 16		[2] 2.8		440,000
WASH-70-C-56	Marysville S.D		[2] 2.8		286,900
CALIF-71-C-530	San Pasqual Valley U.S.D		[2] .6		200,000
MONT-68-C-405	Heart Butte E.S.D. No. 1		[2] 0		95,400
NEV-69-C-404	Humboldt Co. S.D		[2] 0		231,000
	TENTATIVELY INELIGIBLE				
ARIZ-73-C-404	Chinle Comman S.D. No. 24	[3]	[3]	[4] 11,745,111	
N.MEX-73-C-513	Cuba Independent Schools	[3]	[3]	[4] 2,224,400	

[1] Latest application includes pupils eligible or potentially eligible for payment in prior unfunded applications.
[2] Subpriority.
[3] Ineligible.
[4] Request.

Senator ABOUREZK. Mr. Carlucci, I have got a somewhat unrelated question that I would like to ask you. During the 92d Congress, Congress saw fit to increase the operating budget of the Indian Health Service by $6 million with the expectation that sufficient funds would be expended to meet some glaring curative and preventative health needs of the Indian people during the 1973 fiscal year. Unfortunately, the administration disagreed with this action and in fact called for recision of the funds.

In view of the historic July 8, 1970, message from which you have liberally quoted, the message that the President sent to Congress on American Indians and the great glowing words and phrases that this message contained and which held out great hope for the Indian people; that their social and economic needs would be met through some dynamic policies and programs with the resources to back them up with. I would appreciate your providing this committee within the next couple of weeks, well, 2 weeks, a status report with respect to these funds, when you intend to release them and whether or not the administration intends to spend them for the purposes for which they were appropriated.

[The status report follows:]

JUNE 4, 1973.

HON. JAMES ABOUREZK,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR ABOUREZK: I am pleased to respond to the request you made at the hearing on June 1 and to inform you that I have authorized the Indian Health Service of the Department of Health, Education, and Welfare to obligate the full amount of the 1973 appropriation for Indian Health Services including the amount previously requested for rescission. In accordance with this authorization, it is the plan of the Department to carry out as fully as possible the 12 projects and activities for which the Congress added funds in the 1973 appropriation.

Based on our review of the proposed activities, and taking into consideration the fact that we are near the close of the fiscal year, we plan to carry out fully the following programs:

Contract Medical Care.
Three Pilot Urban Indian Health Projects.
Expansion of programs administered by the California Rural Indian Health Board.
50 Additional Community Health Representatives.
Leasing of Health Clinics in Alaskan Villages.
Health Care Communications in Alaska.

We have reviewed the remaining proposed activities and are making plans to undertake them as fully as possible, again in light of the time of the fiscal year, and also with a view to avoiding commitments for activities in fiscal year 1974 which are not now included in the President's budget. The selection of activities must also take into account the limits on the employment of Federal staff under which the Department is operating. The implementation of these activities is dependent upon the completion of action on the FY 1973 Second Supplemental Appropriation bill which would provide the funds needed for the increased pay cost for the Indian Health Service. On this basis, we believe that we can proceed with some aspects of all of the remaining programs:

Additional treatment of middle ear disease (Otitis Media).
Additional Eye Care.
Additional Dental Services: Alaska and Aberdeen and Billings Areas.
Mental Health Program.
Additional Ambulatory Care.
Additional Services at Belcourt, North Dakota.

We are proceeding with the implementation of these decisions as rapidly as possible.

Sincerely yours,

FRANK C. CARLUCCI, *Under Secretary.*

Senator ABOUREZK. I just want to make a comment that I think that that kind of action in the earlier freezing of the $18 million gives the President's Indian message a pretty hollow ring and it doesn't surprise me that we have seen things like the BIA takeover in which you were involved, and the Wounded Knee takeover, and so on. I just wonder if there might not be a way that we can work here to prevent such things from happening in the future by fulfilling at least some promises we make to the Indian people.

Mr. CARLUCCI. I would like to comment on that because I think that that particular recision request has to be looked at in the light of the overall budget for Indian health needs. The overall budget for Indian health needs has practically doubled in the past 5 years. The figrue for 1969 was $94 million. The projected budget figure, the figure in the President's budget for 1974 is $176 million. If we include construction costs the respective figures are $112 million and $218 million. That is a very substantial increase in the budgeting for Indian health needs.

As you are aware, we are also embarked on a renewed program of construction and construction planning. I think the overall figures do show a real commitment to the President's Indian message.

I will be glad to supply the committee with a report on what we have decided on these funds. As you know the Congress is presently considering a supplemental appropriation bill which addresses itself to the question of the recision. So we are awaiting what the Congress final decision will be on the recision before determining what action should be taken.

Senator ABOUREZK. I might say, Mr. Carlucci, that the increase was very welcome, but when you start with an insufficient amount to begin with, an increase, while helpful, can give a misleading picture of what is really happening.

I would like to ask, further, if you know how much of the increase that you talk about was required simply for inflation rather than for increased benefits?

Mr. CARLUCCI. I would have to check that out. I don't know what the inflation rates were for each of those years.

Senator ABOUREZK. I think if you would furnish that——

Mr. CARLUCCI. Obviously any item in the President's budget is eaten up to a certain degree by inflation, but substantial Federal expenditures in themselves, if not kept under control, contribute to inflation, so we get ourselves in a vicious circle. If we simply meet every need we contribute to inflation, so what the President has tried to do is provide a balanced approach in terms of the budget.

I might also note that these expenditures are going up in what is perhaps the most difficult budget year in recent history, in the overall budget. Whereas many programs have suffered cutbacks and decreases, here I am pointing to an increase in the Indian Health Service budget, and Indian programs generally were either maintained level or increased in the 1974 budget, and let me emphasize there was not an awful lot of margin in putting that budget together.

Senator ABOUREZK. You will provide the committee with the amount of increase due to inflation of that increased budget?

Mr. CARLUCCI. We will break that figure down.

Senator ABOUREZK. Thank you very much.

[The information follows:]

4. Amount of increase in the Indian Health Service budget over the past five years required by inflation.

The amount of increase in the Indian Health Service budget over the past five years required by inflation and mandatory salary increases is $54,370,000.

For the Indian Health Facilities Budget (construction) the amount over the past five years is $10,800,000.

Senator ABOUREZK. I have one question I would like to ask Dr. Emery Johnson.

A couple of years ago, Dr. Johnson, we talked about establishing some alcoholism centers, deintoxication and treatment centers because of the tremendous alcoholism problem among the Indian people nationwide, and we specifically talked about one in South Dakota.

I just wondered what further action you have taken on that since 2 years ago.

Dr. JOHNSON. Mr. Chairman, the alcohol programs really got off the ground following the President's message in 1970, when he identified fundings from two sources, one, the Office of Economic Opportunity and the National Institute of Mental Health, to begin to fund alcohol programs directly on Indian reservations.

That first year, as I recall, there was something in the neighborhood of $2 million that was identified for projects like that. At the moment there are some 50 projects, to the best of my recollection, that are now being funded almost exclusively by the new Institute of Alcoholism and Alcohol Control. The amount of money involved in these is roughly about between $4 and $5 million. So there has been a very significant impact in the number of both projects that are funded to tribal organizations, and the amount of money that is being appropriated for that.

Senator ABOUREZK. Do you have available with you now, or perhaps, if not here, in your office, the locations of the alcoholism centers that have been established in the last 2 years?

Dr. JOHNSON. Yes; we could provide that for the record.

Senator ABOUREZK. Would you, please?

Dr. JOHNSON. Yes, sir.

[The information follows:]

5. List of locations of alcoholism centers established in last two years:

Salamanca, N.Y.
Superior, Wis.
Albuquerque, N. Mex.
Clinton, Okla.
Zuni, N. Mex.
Bernalillo, N. Mex.
Rapid City, S. Dak.
Winterhaven, Calif.
Federal Way, Wash.
Anchorage, Alaska.
Pendleton, Oreg.
Seminole, Fla.
Cleveland, Ohio.
Tulsa, Okla.
Topeka, Kans.
Denver, Colo.
Oakland, Calif.
San Francisco, Calif.
Portland, Oreg.
Miami, Fla.
Santa Fe, N. Mex.
Tahlequah, Okla.
San Fidel, N. Mex.
Mescalero, N. Mex.
Pine Ridge, S. Dak.
Scottsdale, Ariz.
Sells, Ariz.
Marietta, Wash.
Tok, Alaska.
Claremore, Okla.
Baltimore, Md.
Highland Park, Mich.
Dallas, Tex.
Salt Lake, Utah.
Sacramento, Calif.
Flagstaff, Ariz.
Seattle, Wash.

Senator ABOUREZK. Senator Bartlett, do you have any questions?

Senator BARTLETT. Yes, Mr. Chairman.

Mr. Carlucci, nice to see you again. There seems to be a little similarity between this and the Oklahoma plan as far as the OEO is concerned.

In the administration proposals, am I correct that there is no grant for training or equipping the tribal leadership to prepare itself for the decisions it would have to make in the programs that would be taken over?

Mr. CARLUCCI. That is correct, Senator, and the reason is that we think sufficient authority exists already in the Snyder Act.

Senator BARTLETT. Sufficient authority exists. Sufficient moneys exist for the tribes and particularly those tribes that might have a little more difficulty than other tribes?

Mr. CARLUCCI. I would defer to the Department of the Interior since that would be contained in their budget, but I would like to stress once again that the question of money is separable from the question of authorizing legislation in any event. Simply because there may not be enough money to meet the total need does not mean that we should duplicate authorizing legislation.

The authorizing legislation will not deal with the money issue. The money issue is dealt with in the President's budget.

Senator BARTLETT. Do you think there is a need for specialized training for tribal councils and tribal leaders to enable them to better assume their duties of making the many decisions that need to be met as they take appropriate action?

Mr. CARLUCCI. I think there is a very definite need and I cannot speak for the Department of the Interior programs, but I recall when I was in OEO we made a determined effort to direct our programs toward equipping tribal leadership to take on the responsibilities that they would have under a self-determination policy.

Senator BARTLETT. You do not think that there is anything lacking in the administration bills that would preclude those programs being——

Mr. CARLUCCI. I think there is sufficient authority to do that in a wide range of legislative provisions. I just mentioned the OEO legislation. As you know, the OEO Indian programs will be coming over to HEW and there is certainly broad authority in that legislation to meet needs. There is authority in some of our education legislation and there is authority in the Snyder Act.

Senator BARTLETT. As I understand the administration's programs and S. 1017, the administration proposal is to permit a takeover by the tribe if they desire to take over all programs, not only HEW, but all the Indian programs, whereas S. 1017 is not, does not include all programs; is that correct?

Mr. CARLUCCI. I defer to the Department of Interior on an analysis of what programs would be covered under S. 1017, but the difference that I was pointing to in my testimony is the difference between contracting and actually transferring programs. The administration bill would go further than 1017 in that it would allow the transfer of programs, whereas 1017 would only allow the contracting. We view the contracting device as an interim measure because the ultimate goal is to allow Indians the choice of having the programs transferred to them and with the right of retrocession, if at some subsequent time

they wish to transfer the programs back to the Federal Government, so the distinction is one of contract versus transfer than program coverage, I believe, but I think the Department of Interior can probably clarify this issue a little more when they testify.

Senator BARTLETT. If a tribe asked for a certain program to be transferred to it, and if it received some help, perhaps even a lot of help, in equipping the leadership, but still there were problems, and the tribe didn't choose, though, to turn the program back, but preferred to try to fight it out, as you know, I think this kind of situation can develop in business, can develop in governmental programs often, would it be possible to get extra help beyond what would be normal to try to work out the difficulties with the existing legislation?

Mr. CARLUCCI. Yes; there would be sufficient authority to provide technical assistance and advice to the tribes in working these problems out. Yes; I don't think that would pose any problems, Senator.

Senator BARTLETT. Mr. Secretary, thank you very much. Thank you, Mr. Chairman.

Senator ABOUREZK. Thank you.

The staff, Mr. Gerard, has a couple of questions he would like to ask at this time.

Mr. GERARD. I would like to refer to page 3 of your statement. About midway in the paragraph, you refer to the community health aid program in Alaska and the community health representative program in the other States. I would presume that these two programs have been established under contracts with the Indian Health Service?

Mr. CARLUCCI. I would like to ask Dr. Johnson to answer that.

Dr. JOHNSON. Yes; that is correct.

Mr. GERARD. With that answer, under what authority have the contracts been negotiated with the Alaskan representatives and the tribal groups in the other States?

Dr. JOHNSON. Basically under the Buy-Indian Act.

Mr. GERARD. You consider the Buy-Indian Act authority in terms of meeting such contingencies as advance payments? Are you exempt from the Federal procurement regulations? In other words, how much flexibility do you have?

Dr. JOHNSON. The authorities that we have there, of course, are fraught with a number of problems in attempting to contract directly with the tribes. A number of Federal procurement regulations which still prevail do handicap our ability to deal directly with the tribe. The advancement payment, of course, is one. It is possible to get a special exception for advanced payments, but there are a number of impediments within that. I think this is one of the major reasons why we would support the new contracting authorities that are being proposed, because it does give us much more flexibility and would enhance our ability to contract with the tribal governments and their agencies.

Mr. GERARD. Going to section 106 of 1017, you will note that specific exceptions to the Federal procurement regulations are suggested in the bill. The next question in that regard is, if the committee were to amend the bill further and take all of the tribal contracts from the Federal procurement regulations and instead permit the respective secretaries, HEW and Interior, to establish their own rules and regulations for Tribal contracts, would you consider this a more desirable

approach, rather than just a few specific exceptions? You may want your legal counsel to respond to that, or you yourself may respond.

Mr. EDELMAN. We would consider that while the general authority you propose would certainly give us unlimited flexibility, we do think that specific exemptions could accomplish much the same result.

Mr. GERARD. In other words, you don't see the need for a total exemption from the Federal procurement regulations? The exemptions cited here in your opinion are sufficient to implement the contracting program?

Mr. EDELMAN. No; I think the record submitted by the department indicates further technical amendments to this section. If those amendments were made we think this would accomplish much the same results as you suggest.

Mr. GERARD. Would you be willing to describe the technical amendments?

Mr. EDELMAN. Exemptions from competitive bidding and exemptions from bonding, as I recall.

Mr. GERARD. Perhaps, for the record, Mr. Edelman, you would give us the specific citations for those various acts?

Mr. EDELMAN. We will be glad to submit it.

[The information follows:]

PROPOSED AMENDMENT TO S. 1017 TO PROVIDE FOR ASSIGNMENT RATHER THAN DETAIL OF PERSONNEL

On page 6, line 22, strike out "DETAIL" and insert in lieu thereof "ASSIGN".
On page 6, line 25, strike out "detail" and insert in lieu thereof "assign".
On page 7, line 8, strike out "detailed" and insert in lieu thereof "assigned".
On page 7, line 9, strike out "detail" and insert in lieu thereof "assignment".
On page 7, line 17, strike out "detailed" and insert in lieu thereof "assigned".
On page 7, line 23, strike out "detailing" and insert in lieu thereof "assigning".

REASON FOR AMENDMENT

Civil service employees are protected in negligence suits by the Federal Tort Claims Act. Employees of the Public Health Service are also protected in suits for malpractice or negligence by section 223 of the Public Health Service Act. However, were any such employee to be "detailed" to an Indian tribe or organization which had assumed control of a program pursuant to S. 1017, the employee would lose those benefits. This would not be the case if the employee were "assigned". Since this Department would prefer that the rights of civil service employees and those of employees of he Public Health Service who are working at Indian hospitals not be affected by the transfer of such hospitals to the Indians, we would prefer that the mechanism by which employees are temporarily transferred be referred to as an "assignment" rather than as as a "detail."

PROPOSED AMENDMENT TO S. 1017 TO PROVIDE FOR WAIVER OF CERTAIN FEDERAL CONTRACTING LAWS

Beginning with line 13 on page 8, strike out all down through line 19 on page 8 and insert in lieu thereof the following:

Sec. 106. (a) In entering into contracts with tribal organizations pursuant to sections 102 and 103 of this Act, the appropriate Secretary may waive the requirements of 40 U.S.C. 270a–270d (dealing with bonds of contractors for public buildings or works) and the Federal Properties and Administrative Services Act, 40 U.S.C. 471 et seq. (dealing with management and disposal of government property).

REASON FOR AMENDMENT

The revised subsection (a) would enable the appropriate Secretary to waive, whenever appropriate, provisions of the Miller Act, which require performance bonds from certain contractors, and provisions of the Federal Property and Administrative Services Act, which require that certain procedures such as ad-

vertising and competitive bidding be followed. The imposition of minimum wage rates could seriously disrupt the economic balance in many Indian communities, and the imposition of the costs of bonding on Indian contractors would, in some cases, pose an insurmountable financial burden. Finally, many of the requirements of the Federal Property and Administrative Services Act may prevent the making of contracts with the appropriate tribal organization because the requirements such as advertising and competitive bidding could result in another agency or organization making a better offer.

Senator ABOUREZK. Unless you have anything further, that is all the questions the committee has. We thank you very much for your appearance and your testimony.

The next witness will be John Kyl, Assistant Secretary for Congressional and Public Affairs of the Department of the Interior, and his staff of people with the Bureau of Indian Affairs and the Interior Department.

Mr. Kyl, welcome back to the committee again today, and there is one benefit to appearing, I guess, 2 days in a row. I don't ask you the same questions about the Indian Commissioner and why he wasn't appointed yet because we found out yesterday you don't know why.

STATEMENT OF HON. JOHN H. KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND PUBLIC AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY JAMES HAWKINS, DIRECTOR OF EDUCATION, BUREAU OF INDIAN AFFAIRS; ANDREW LAWSON, EDUCATION SPECIALIST, BUREAU OF INDIAN AFFAIRS; AND DENNIS DRABELLE, STAFF ATTORNEY, OFFICE OF LEGISLATION

Mr. KYL. Mr. Chairman, as usual I bring the experts with me.

Senator ABOUREZK. If you would, introduce them.

Mr. KYL. On my left is Dennis Drabelle, with the Legislative Office, Department of Interior. Seated next to me is Jim Hawkins, Director of Education Programs for BIA. To his right, Andrew Lawson, who is an education specialist. Incidentally, Mr. Chairman, he is a Tshimshian Indian from Alaska working on his doctorate in the field of educational administration.

Mr. Chairman, I am pleased to be here today to testify on these bills dealing with Indian self-determination and education.

We appear here again in a spirit of cooperation, feeling that we can't afford the kind of adversary situation which sometimes develops because that leads to inaction and we must proceed with this business.

We do cover a great deal of ground in these bills and therefore I will try to be brief, but again this interjection before I get to the reading of the statement itself.

In order to answer better a couple of questions that have been raised, may I first point to the fact that we do not have at present any specially marked funds for training or educating Indian tribes for this takeover, this assumption of authority.

Senator ABOUREZK. Do you think it would be a good idea to have such funds?

Mr. KYL. Yes, sir, and this is what I intend to indicate here. We do, of course, have personnel at the BIA, personnel which is detailed to tribes, very frequently to help with problems of this kind, but there is no special program.

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In our report we note that one of the more important aids in carrying out the goal of transferring programs to Indian control by way of contract appears in section 104, which authorizes both Secretaries to make grants to Indian tribes to allow them to make necessary preparation for entering into contract authorized by the bill.

We consider such grant authority to be a most useful means of removing one of the major obstacles to contracting with tribes. That thought is continued on page 2 of our report.

One other item I would like to place in the record at this point is that there were some questions regarding construction of schools. In the last several years we have been spending $30 to $35 million a year on construction, both on BIA schools and on public schools. But I hasten to point out that so far as we know there really is no authority in the statute for assisting with this construction of public schools. This is done in a line item in appropriation bills and as long as there is no objection the items do stay in the bills. There has been an expenditure of $35 million per year, Mr. Chairman.

Continuing, then, with the statement, I first would like to summarize the three administration proposals which you have before you this morning, and then discuss S. 1017 separately and in a little more detail.

S. 1343 is the administration's effort at enabling Indians to exert more control over their own lives. Its central provision is one whereby any tribe could ask for transfer of a Federal Indian program to its control, and the appropriate Secretary would be obliged to make such a transfer. The only prerequisite would be a showing by the tribe that it had obtained adequate insurance to cover possible injuries resulting from operation of the program. The bill has a retrocession provision, allowing a tribe which runs into difficulty in operating a transferred program to return it to the Federal Government without prejudice; an emergency section, which permits the appropriate Secretary to seize control of a program operated in a drastically inappropriate manner such as the mismanagement of funds; and a provision guaranteeing that a transferred program would receive at least the same funding as if it had remained with the Federal Government. This is what we have come to call in recent years a "hold harmless provision."

S. 1340, a companion to the administration's transfer bill, would enable any Federal employee who accompanies programs transferred to the tribes to retain his civil service benefits. This bill also would give such an employee the security of being rehired by the Federal Government for a position comparable to his previous one within 5 years of the transfer. We consider this bill a necessity inasmuch as the expertise of Government employees will be vital to the success of transferred programs.

S. 1342 would amend the Johnson-O'Malley Act, which is the vehicle by which the Secretary of the Interior is able to contract for the education of Indians. Presently the Secretary's authority is limited to contracting with States or State institutions. The amendments in S. 1342 would add Indian tribes and organizations as possible contracting parties. This added authority will aid the Secretary in insuring that Johnson-O'Malley funds are actually spent to improve the public education of Indian children.

Mr. Chairman, all three of these bills emanate from the President's Indian message of July 8, 1970. We recommend their enactment.

On the other hand, we do not believe we have a monopoly on ideas or increasing Indian self-determination. As will become clear in our discussion of S. 1017, we believe there is merit to the approaches to self-determination contained in that bill.

Title I of S. 1017 adopts a contractual—rather than an outright transfer—approach to self-determination and applies to both general BIA programs and to public education via Johnson-O'Malley funds. Thus, under title I the Secretary would be authorized to contract with Indian tribes to plan, conduct, and administer programs carried out under the Snyder or Johnson-O'Malley Acts. With a few amendments discussed in our report, we recommend enactment of title I as a means of greatly enhancing the ability of American Indians to shape their own lives. If this title were enacted, we would consider S. 1342, our Johnson-O'Malley proposal, moot.

Title II of S. 1017 would provide several education programs. Part A of that title covers the area of contracting for public education which we have already discussed, with one key difference. Under part A the Secretary would not enter into any contract—whether it be with the State or subdivision thereof or with Indians—unless he was furnished with a plan by the contracting party. This plan would have to assure the Secretary that the public school involved in the potential contract was receiving equitable fiscal treatment in comparison with schools and school districts in the same general area. No such provision appears in our Johnson-O'Malley Act proposal. We believe that this kind of safeguard may prove most helpful to Indian students in public schools, and a. a whole we find much merit in part A of title II.

On page 11 of the bill, section 203, line 23, we talk about an average property tax rate, and I suggest to the committee that you might want to consider this factor in developing language if you go in this direction. The tax rate is not really a very good yardstick of effort because the assessed evaluation techniques mean as much or more sometimes than the simple tax rate.

Continuing on that same vein, on page 16 of the bill, we call for an Indian advisory council on education composed of educators and proportionately representative of all tribes within such States as have been established by the State education agency. I doubt if that situation is subject to being achieved for the simple reason that in the State of Alaska, as an illustration, there are so many villages which are considered tribes. It is not a serious matter, but something you might want to look at as you proceed with the markup of the bill.

Parts B, D, E, and F, Mr. Chairman, I would like to consider together, putting part C aside for a moment. We recommend against the enactment of parts B, D, E, or F because they are duplicative of existing authority.

Mr. Chairman, I put part C to the side because it deals with public school construction, a matter that presently falls within the jurisdiction of the Department of Health, Education, and Welfare, and because of that added factor that I made a moment ago, the fact that we do now actually achieve this purpose in some instances through a line item in the appropriations process. We defer to the views of HEW on this part.

One further item I would like to add to this report. Getting back to a matter which we discussed yesterday and which both the committee

and the Department feel is an important item, I would like to mention the business of publication and auditing.

In the Jackson bill the auditing would be part of the contractual arrangement. In our bill there would be an annual report which would be both directed to the fiscal management and to the achievements of the program, and that report to the Secretary would be subject to audit by the Secretary or by the Controller General, GAO.

I mention this fact again, as I close my formal testimony this morning, because I continue to want the committee to be satisfied when this bill is presented that we do have adequate control for keeping track of not only the expenditure of funds so far as physical management is concerned, but also to see that the money is really reaching the students, is in fact achieving the purpose for which the bill is being created.

Thank you, Mr. Chairman.

Senator ABOUREZK. Those are good suggestions and we are grateful for their offer to the committee.

I believe you did state that the existing authority that you are using now is the Buy-Indian Act. Was it Mr. Hawkins who made that statement a minute ago?

Mr. HAWKINS. No, sir.

Senator ABOUREZK. Under what authority is the Bureau of Indian Affairs currently approving contracts with private groups and organizations for the takeover of various Bureau programs and services?

Mr. HAWKINS. Mr. Chairman, I believe it is based on the Buy-Indian Act, and I am not sure whether the Snyder Act is involved in that or not, but the Buy-Indian Act is the primary.

Senator ABOUREZK. Do you consider that this authority is adequate, and if not, I would like you to highlight the major deficiencies or shortcomings of the authority that you talk about.

Mr. HAWKINS. I am not familiar, Mr. Chairman, with all of the aspects of contracting in the Bureau of Indian Affairs. My experience has been limited primarily to contracting for educational services and at the present time, in terms of educational services, we do find that the authority is fairly adequate. There is the problem already mentioned: the present method of contracting, the Federal contracting regulations, if you will, under which we operate, presume an adversary position, or at least an arm's-length position with the contractor. This is the normal Federal Government-contractor relationship. However, we feel that many of our Indian contractors are not able to partake of an arm's-length relationship. They request, and we are happy to give, continued technical assistance during the life of the contract in order to make certain the services provided are adequate. The normal Federal contracting procedures do not envision this sort of a close relationship between a contractor and the Federal Government. For that reason there are certain strains, if you will, placed between an Indian contractor and the Bureau of Indian Affairs in attempting to achieve the joint goal of providing a better educational program for Indian children.

Senator ABOUREZK. You think essentially though the Buy-Indian Act is adequate authority?

Mr. KYL. May I expand on that just a moment? I don't believe the Buy-Indian Act gives us any grant authority.

Senator ABOUREZK. No; I think that is true.

Mr. KYL. In the report, on page 2, we do consider this matter at length.

Senator ABOUREZK. It doesn't have advanced payment authority either, does it?

Mr. KYL. That is correct. We do on page 2 in the report have additional language regarding the specific matter. I started to read this sentence a moment ago:

> We consider such grant authority to be a most useful means of removing one of the major obstacles to contracting with tribes—their inability to meet general Federal standards for contractors. The Federal contracting rules are predicated on an arms-length relationship with the United States. More specifically, before a Federal contract can be effectuated, the contracting officer must make a finding that the proposed contractor is capable of performing his part of the bargain. Vis-a-vis many Indian tribes or tribal organizations, such a finding would be impossible to make, and the Department's efforts to contract with them would be stymied. The grants authorized by Title I would fund preparatory training and other activities necessary to raise Indians to the level where they can meet Federal contracting standards.

Senator ABOUREZK. If S. 1017 were enacted into law, would title I be useful to the administration in achieving the stated objectives for the Indian people?

Mr. KYL. It certainly would be, sir.

Senator ABOUREZK. On title I again, section 106 provides that contracts with private organizations pursuant to the act shall be exempt from specified Federal procurement regulations. If the committee were to amend the bill to provide that contracts with tribal organizations shall be exempt from Federal procurement regulations and that the Secretaries of Interior and HEW are authorized to establish their own rules and regulations to govern contracts with tribal organizations, would the administration be opposed to such an amendment?

Mr. KYL. I believe that accomplishes the same purpose, sir, and may I proceed once again to this matter of publication and auditing. If we relax all these standards, then we have to keep a closer contact, continuously, day-by-day with this entire process.

Let me give you a specific illustration without alluding to a specific tribe, but I am citing an actual case.

In this instance we have a tribal housing authority. We don't have to go to bids because it is an Indian project. The individual who comes in is a friend of the tribal attorney and therefore has one leg up in consideration by the tribe. On close questioning he did not have the bonding capacity he needed and had to find a partner so he could acquire the adequate bonding capacity. Then the project got underway. Because there was no scrutiny, one of the members of the board is now in the penitentiary. When the project management failed, the board decided they needed a project manager to assure that all of the housing construction, management, et cetera, was the best type. Who do you suppose was selected as the manager of the property? Members of the contracting firm that were building the houses, and at a pretty good salary.

Now, if we are going to relax the standards—and I am in favor of doing it as I have read here from the report—we will need a totally adequate followup program to review, not once a year but continuously, the fiscal responsibility of the tribes.

In many cases—I don't want to use the word "malfeasance"—but the inefficiency which sometimes leads to malfeasance is simply a re-

sult of the fact that we don't have a sufficiently sophisticated tribal group or group of individuals operating these programs.

Senator ABOUREZK. Of course, this would presume that the Secretary would be vested with the authority to make regulations that he sees would fit or dovetail in with the needs of the Indian tribe and the Indian people? Wouldn't that be an improvement over the fact that they might have standards, and rather rigid standards of construction?

Mr. KYL. Yes, sir, I think, however, that I would personally prefer to have some mutually acceptable language in the bill, because in the absence of that language, then the Secretary will have to prescribe all the rules and regulations.

Senator ABOUREZK. Language that would do what?

Mr. KYL. That would actually establish a very close system of review, continuous review, and so on.

Senator ABOUREZK. By the Secretary?

Mr. KYL. Yes, by the Secretary; but I would rather have some congressional guidelines, at least more inclusive than we had in the bill, because otherwise what we are going to have unfortunately is a situation in which tribes who think they are somehow aggrieved by a Secretary's decision are going to be running to the Congress, the House, and the Senate, and seeking help to change the attitude of the Secretary.

Mr. Chairman, before the meeting started this morning, we had a little conversation with staff members regarding the possibility of working some of these matters out together and I want to reiterate at this point that we certainly stand ready at any moment that is convenient to you to consider some of the matters in greater detail, and to see if we can't arrive at something satisfactorily.

Senator ABOUREZK. Mr. Secretary, I would like to ask Mr. Gerard of our Indian Subcommittee staff to proceed with a question or response to your statement.

Mr. GERARD. Mr. Kyl, we have been contacted by some of the private people who are currently engaged in contracts for the operation of the Bureau schools. Now, on the other side of the argument, they contend that the Federal procurement regulations are so rigid that in negotiating the contracts between the Indian group and the Bureau, that it is necessary to develop, sometimes, 30-page documents, and when you are in the area of education, according to their argument, it is a little more difficult to define the results as opposed to, let's say, if the Bureau were purchasing a piece of hardware where you can set specific requirements. Its been their recommendation, at least the Indian people who contacted the committee, that the bill should be amended further to exempt the contracts from the Federal procurement regulations to permit the Secretary of the Interior, and in the case of HEW, the Secretary there, to develop their own rules and regulations that would probably be more in keeping with the peculiar circumstances of the Indian people.

They feel the Federal procurement regulations, while desirable for government in general, have no place in negotiation of Indian contracts.

Mr. KYL. May I respond first, that I don't think they have no place, but I would certainly agree that they ought to be adjusted. And for a more detailed, accurate response, I would like to defer to Mr. Hawkins because he is involved in this every day of the year.

Mr. HAWKINS. Mr. Chairman, I tend largely to agree with Mr. Gerard's statement. There has been misunderstanding and difficulties posed by the Federal contracting regulations and as I said previously, they envision an arms-length relationship with the contractor when, in fact, the relationship ought to be very different from that.

I would agree, however, that we do need, and I would recommend, the possibility of our working together to develop, perhaps, an appropriate part of the bill which might give the sense of the Congress that the Government's investment ought to be protected and would make clear the Government's intent to provide better services to Indians as a replacement for the Federal contracting regulations.

Senator ABOUREZK. Of course, we don't really want to get into the business of writing regulations ourselves, but we would be very happy to work with you on some form of guideline operation and even if it went into the committee report, if nothing else, I think it would be a help perhaps to you and to the whole situation, so if you would have your legal staff work with us, with Mr. Gerard, I think we could expedite that kind of thing.

Mr. KYL. We will be pleased to do so at your convenience.

Senator ABOUREZK. I would like you to provide for the record within 2 weeks' time, if you can, a current listing of all contracts entered into with tribal organizations pursuant to your existing authority. And beyond that, would you add contracts that you have entered into with nontribal Indian organizations or groups and distinguish between the two.

Mr. KYL. The second part of that, sir; do you mean relating to Indians?

Senator ABOUREZK. Yes; that is what I mean, relating to Indians I hope the BIA hasn't gone outside of that area yet.

Senator ABOUREZK. The legislative history of Johnson-O'Malley indicates that the intent of the 1934 act was never to strengthen the local Indian community but that Johnson-O'Malley was designed to transfer the responsibility for Indian education from the Federal Government to the States and to facilitate the assimilation policy then current in the BIA by encouraging enrollment of Indian students in public schools. Do you agree with that?

Mr. KYL. I have not read all of the legislative history which attended the passage of that act. I know there have been diversions from that purpose. First let me speak to the difficulties which some public schools have in managing this particular fund. It is not simply a question of somebody trying to take this money for non-Indian purposes. There are difficulties involved and I believe they would be cleared by either approach in the two bills we have before us.

The second item I would like to cover is to have our expert in that field detail very briefly the result of court cases involved in this business of State responsibility for education.

Senator ABOUREZK. Before that I wonder if Mr. Hawkins would like to make an attempt at answering that question. Do you agree with that assessment?

Mr. HAWKINS. Yes, sir, I think there is no question but that the legislative history of the Johnson-O'Malley Act does show the intent was to provide for the transfer of Indian students to public schools

and what might be called the assimilation of Indians into the mainstream of American life.

Senator ABOUREZK. Please proceed.

Mr. LAWSON. I think because there is no mention of education in the Federal Constitution that education then is a responsibility of the States for the children within that State, and I am sure that applies to Indian children as well The Federal Government doesn't deny that because——

Senator ABOUREZK. I wonder if I might stop you there. For example, the 1868 Treaty, do you know what that treaty contains?

Mr. LAWSON. No; I don't.

Senator ABOUREZK. If I am not mistaken, I think the responsibility for educating Indian children lies with the Federal Government. Do you disagree with that?

Mr. HAWKINS. I can't respond in terms of the treaty, Mr. Chairman; without knowing the specific treaty and having done some research on it myself.

Senator ABOUREZK. I wonder if you might not be willing to qualify your statement that States have the entire responsibility for educating Indian children?

Mr. KYL. We are still to get to this point of the court cases, and I would like to have Mr. Lawson address——

Mr. LAWSON. The money provided by the Federal Government for the education of children living on trust lands, we understand that—the States draw on that fund to educate Indian children in public school districts. The question arose whether or not the education of children on trust land is State responsibility.

The court determined that no, that the education of military dependants and therefore Indian children is not a State responsibility but that once a State draws upon 874 for the education of one Indian child or one military dependent, therefore it then assumes a responsibility for all such children that are eligible.

States have done that. They have drawn upon 874 to educate Indian children. Therefore, they have admitted that the education is a State responsibility.

Senator FANNIN. What case are you quoting from, that would justify that statement?

Mr. LAWSON. I don't have the information with me.

Senator FANNIN. I would dispute your statement. I think it is all-encompassing and I think incorrect. I think you can draw some conclusions from some of the cases, but I think you are protracting that far beyond the court cases.

Mr. HAWKINS. Could we get the citations for you, Senator Fannin?

Senator FANNIN. Please. I would like to have it. It was never intended, and when we talk about impact, I think you discussed that somewhat within the line of intent, but unfortunately it was not carried out to that basis.

As you know, the impact aid was also all-encompassing. It covered many areas where there was not a need, and unfortunately that was the greatest problem that was involved. The need was not a consideration in most instances because here we had some of the wealthiest counties in the United States receiving impact aid and we had many of the areas in our Nation that were direly in need that received very little impact aid.

Senator ABOUREZK. I think I might want to adjust one more piece of correction. The impact money is furnished not because they are Indian students, but because they come from tax exempt lands.

Senator FANNIN. Other facilities were involved, the people involved were people employed by the Federal Government. That was so wide in its coverage that it did not really take care of the need. There was no relationship between need and the application of the impact funds, or very little relationship. I wouldn't say no relationship, but very little.

Mr. KYL. We don't argue the State has the sole responsibility in this, and we are not trying to shirk the Federal responsibility.

Senator FANNIN. I think we should get that very clear in our mind because what I think the States have done is assumed a responsibility in many instances which was not justifiable, and, of course, the States do have schools on reservations and, unfortunately, we have a duplication of effort in many instances. But I will wait until my turn to question comes before I get further into that.

Senator ABOUREZK. I wonder if your legal staff might not be willing to prepare a legal memorandum distinguishing and setting out both the Federal and State responsibilities for educating Indian children. I think it would be very beneficial in considering this legislation.

Mr. HAWKINS. Yes, sir, we will provide that.

[The memorandum follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 3, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request of Senator Abourezk, during the June 1 Indian Affairs Subcommittee hearings on S. 1017, S. 1340, S. 1342, and S. 1343, for a legal memorandum outlining the respective responsibilities of the Federal Government and the States for Indian education. No one entity—either the Federal Government or the States considered collectively—is solely responsible for the education of Indians. Rather, the responsibility is lodged with and exercised by both entities in certain complicated ways.

I. THE STATES' RESPONSIBILITY

The responsibility of the States with regard to the education of Indians is to provide, in so far as possible, the opportunity for such education, on the same terms under which public education is made available to citizens generally. In Brown v. Board of Education, 347 U.S. 483, 493 (1954), the United States Supreme Court held that the opportunity for public education, "where the State has undertaken to provide it, is a right which must be made available to all on equal terms." Moreover, the courts have long held that the availability of Federal Indian schools does not justify turning away Indians from the public schools. United States v. Dewey County, 14 F. 2d 784 (D.C.S. Dak., 1926), aff'd sub nom. Dewey County v. U.S. 26 F. 2d 434 (Eighth Circuit, 1928), cert. den. 278 U.S. 649 (1928); Piper v. Big Pine School Dist., 193 Cal. 664, 226 Pac. 926 (1924). It can be fairly stated, then, that in so far as possible, the States have the basic responsibility to educate Indians as they do all of their citizens. Indeed, each of the States has bound itself by statute to provide this "universal" education to all eligible students.

II. THE FEDERAL RESPONSIBILITY

It is important to note, however, that two factors render State education of Indians on reservations a difficult task. First, reservation land is held in trust for Indians by the United States and therefore is not subject to local taxation, the nearly universal source of funding for American public education. Thus, the public education of Indians is often a cost which the States must look else-

where than the Indian community to meet. (In many cases, the States look to the Federal Government, which contracts with local educational agencies for the education of Indians under the Johnson-O'Malley Act, 48 Stat. 596, as amended by 49 Stat. 1458.)

Second, many Indians live in remote areas of large reservations, very far from public school facilities. The combination of these factors results in public education of some Indians being a herculean task.

Because of the tax exempt status of the trust land and frequent absence of organized public school districts, the Bureau of Indian Affairs has assumed responsibility for providing schools. This Federal responsibility for educating Indians, however, is not tied to any specific, primordial statutory or constitutional mandate. (Not even those treaties which provide for the education of Indians specifically impart this duty to the Federal Government.) This is not to say that the Federal Government has any intention of shirking its responsibilities in Indian education. Indeed, it is submitted that the United States has a strong moral call to meet these responsibilities. Rather, the point to be made is simply that the Government's activities in educating Indians should be considered as being exercised in lieu of the basic State responsibilities. This analysis is borne out in practice in that more than two-thirds of Indian children from reservation areas are currently enrolled in the public schools.

In addition to considerations which flow from Indian trust land status, another major factor has resulted in the Federal Government's assuming some responsibility for Indian education: in some cases the basic education programs offered by the States to all their citizens are not fully responsive to the special needs of Indian students. In such instances, the Federal Government has often contracted with State educational agencies to provide special programs tailored to meet Indians' needs. Such contracting is generally carried out under authority of the Johnson-O'Malley Act, *supra*.

The Federal Government discharges its responsibilities for educating Indian children in the following ways:

(1) 87,080 Indian students are enrolled in public schools which receive financial assistance from the Federal government through Johnson-O'Malley funding.

(2) 53,763 Indian students are enrolled in day and boarding schools conducted by the Bureau of Indian Affairs.

(3) 4,025 Indian students live in Federal dormitories and attend public schools.

(4) 2,222 Indian students attend Indian-controlled schools in Indian communities.

(5) 61,000 Indian students (most of whom are also counted in group 1, *supra*) attending public schools are the beneficiaries of Federal "impact aid" provided to their schools by the Office of Education; additional resources for Indian education will be provided through the Department of Health, Education, and Welfare by the newly-funded Title IV of P.L. 92-318.

(6) Indian children in public schools throughout the country whose parents live at the poverty level are provided special educational opportunities through resources provided by the Office of Education pursuant to the Elementary and Secondary Education Act of 1965.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

Senator ABOUREZK. I wonder if you would also explain to the committee at this time the criteria used in determining Johnson-O'Malley contracts?

Mr. HAWKINS. Yes, sir, the Johnson-O'Malley contracts are prepared subsequent to a plan provided by the prospective contractor, normally a State department of education. In some instances through the Buy Indian Act we are contracting with tribal groups for the distribution of Johnson-O'Malley funds. And in a few instances we are contracting directly with an individual school district where there are so few school districts in the State, such as Nebraska, that it would be inconvenient to go through the State department of education.

After review of that State plan or the plan for the purpose of educating children, and some negotiations, the plan is then approved and a contract is prepared pursuant to that plan. The contract can be quite different from one State to another, one area to another, depending upon the needs of the children.

The criteria have been changing recently in terms of attempting to move the funding of these programs much more in the direction of supplementary programs rather than programs for basic support of education.

In all cases the regulations now require that there be tax-exempt Indian land within the school district as a precondition of Johnson-O'Malley funds.

Senator ABOUREZK. We note that the per pupil expenditure of Johnson-O'Malley allocations ranges from less than $100 per child in some States, to more than $900 per child in others. How do you explain the discrepancy?

Mr. HAWKINS. I wonder if Mr. Lawson could answer that question for you.

Mr. LAWSON. I think it is based on need, not a per capita expenditure.

Senator ABOUREZK. Based on need? How is that criteria determined?

Mr. LAWSON. Under the contract with the State.

Mr. HAWKINS. A number of factors are taken into consideration. For instance, a judgment as to the adequacy of the basic program, the adequacy of the tax base on which the school district receives basic funds, the amount of State aid which is received by a school district which varies widely from State to State, and the quality of the supplementary program which is being proposed. These are all factors which enter into the judgment in this respect, Mr. Chairman.

Senator ABOUREZK. Would it be accurate to state that there is no real uniform criteria for these disbursements of Johnson-O'Malley funds to States, and also no uniform criteria in determining the purpose for which Johnson-O'Malley funds are used?

Mr. HAWKINS. This is by and large correct, Mr. Chairman, and something which needs to be addressed in the very near future if Johnson-O'Malley continues as it is or is modified by this bill. We certainly need to address ourselves to this.

Senator ABOUREZK. How would you propose to make that criteria uniform?

Mr. HAWKINS. I think that this would need to be addressed either through legislation or a combination of legislation and the publishing of new regulations which would address themselves specifically to the need expressed by school districts and which would provide for a more uniform meeting of the specific needs of Indian kids.

Senator ABOUREZK. Is that ability to make Johnson-O'Malley uniform, within the existing authority of the Secretary of the Interior?

Mr. KYL. May I clarify this first? When you speak of making the program uniform, you are speaking of a formula which can lead to a uniform application, rather than uniformity in dollars? Is that correct?

Senator ABOUREZK. Yes.

Mr. KYL. Go ahead.

Mr. HAWKINS. Yes, sir, I think within our present authority we do have the ability to issue regulations which would provide for a more uniform distribution of the resources.

Senator ABOUREZK. Can we get an idea of when the Secretary intends to do that kind of thing?

Mr. HAWKINS. Yes, sir, we had hoped this would have happened previous to now. One of the reasons it has not happened is that the funding of title IV of the Higher Education Act with HEW provides for a possibility of conflict or of duplication since some of the language in that act would duplicate the current expenditure of Johnson-O'Malley funds with public school districts.

It was our hope that the regulations would be issued from HEW, from the U.S. Office of Education, and that our Johnson-O'Malley regulations would be modified to supplement those regulations, rather than to duplicate or conflict with them in any way.

Senator AROUREZK. Weren't they in the process of revision before the act was passed, through?

Mr. HAWKINS. Yes, sir; they were.

Senator ABOUREZK. In public school districts where there is more than one school community and in one of the school communities there is heavy Indian enrollment, are the Johnson-O'Malley funds targeted to the schools which educate Indian children, or do they go into the general operating budget of the school district as an entirety, or as a whole?

Mr. HAWKINS. The intent is that these funds be targeted for the schools enrolling Indian kids.

Senator ABOUREZK. What is the practice?

Mr. HAWKINS. I beg your pardon?

Senator ABOUREZK. Understanding the intent, what is the practice?

Mr. HAWKINS. The practice has not always followed intent. Our review from time to time has indicated this, and we are attempting to modify contracts now to make certain that the money does flow to the Indian child and not to the general fund.

Senator ABOUREZK. How recent was the last review?

Mr. HAWKINS. I believe we have had reviews as recently as this past winter in several States. I would have to get you those reviews. Our Office of Survey and Review has made several audits of various programs.

Senator ABOUREZK. Would part of title II of 1017 solve that problem?

Mr. HAWKINS. It would go a long way toward solving it, Mr. Chairman.

Senator ABOUREZK. What further language would be required in that bill to solve it all the way or at least as far as we could get with it?

Mr. HAWKINS. Other than what is in our report, I am hesitant to recommend any further language. I think that very specifically this does target Johnson-O'Malley funds so that we can point to the bill and say this is the intent of Congress. We would still have flexibility in meeting the special needs of Indian children since there have been some changes which indicate that the programs being suggested in the act are not the only ones covered, but there are others that certainly can be provided for.

One of the things that concerned me in the original bill was that there was no provision for authorizing funds for what we call parental costs. As you may know, many Indian families are so poverty stricken that they do not have the funds for gym clothes, gym shoes, other kinds of costs that are required if a child goes to high school, let's say. And as the bill now stands, it has the flexibility which would permit us to provide for parental costs where required.

Senator ABOUREZK. I would be interested in having that review. Does it provide the names of the schools and the school districts where J-O'M funds are not getting to the Indian children?

Mr. HAWKINS. Yes, sir, we will be glad to provide it for you.

[Due to the voluminous nature of the material it has been retained in the committee files.]

Senator ABOUREZK. I would like to know if the urban Indian kids are covered under title IV of the Education Amendments of 1972?

Mr. HAWKINS. Yes, sir, they are.

Senator ABOUREZK. What form of monitoring, evaluation, and accountability system does the BIA have for the programs under the Johnson-O'Malley contract?

Mr. HAWKINS. Mr. Chairman, I think that I would have to say that the monitoring is provided by the various area offices involved in the Johnson-O'Malley contracts. The education specialists in those area offices are charged with the monitoring and assistance, if required, under various Johnson-O'Malley contracts. I might say that, in fact, we provide a minimal amount of monitoring and we need to increase this effort rather substantially in the near future in light of the number of reports we have had.

Senator ABOUREZK. Yes; I would agree. I think perhaps monitoring hasn't been anywhere near what it should be.

When violations are discovered in the use of Johnson-O'Malley funds what procedure is used to recover that money?

Mr. HAWKINS. To my knowledge, Mr. Chairman, in only one case have we requested or withheld funds in the amount of discrepancy which we have discovered. This was in Alaska this past year. Ordinarily I would say that our approach would be to withhold Johnson-O'Malley funds in the amount of the discrepancy in a subsequent year's contract. We have not, to my knowledge, gone to a State department of education and requested a refund of the amount in question. In every case, if there is a question, we go to the State and ask them to comment on it, to determine whether the facts are in fact correct, and then we have to make a determination as to our approach toward recovery.

Senator ABOUREZK. How are Public Law 81-874, Impact Aid Funds, treated in the Johnson-O'Malley contract?

Mr. HAWKINS. The income is treated as basically income to the school district in the same way that State assistance, basic assistance, or a local tax income would be treated, and it is our desire to see income of that sort provided sufficiently for the basic operation of the school. Then we like to see the Johnson-O'Malley funds to come in as a supplement for special programs specifically for Indian children. This is our goal and I am hopeful that as we develop the new regulations that they will reflect this.

Senator ABOUREZK. Would you identify the States where Indian tribes or tribal organizations are contracting for Johnson-O'Malley funds themselves.

Mr. HAWKINS. Yes, sir, North Dakota, South Dakota, Nebraska, and New Mexico.

Senator ABOUREZK. What is the authority for that contracting?

Mr. HAWKINS. I believe the authority is the Buy-Indian Act. And after we use that authority, then we use the Johnson-O'Malley funds for funding of the contract.

Senator ABOUREZK. I wonder if Mr. Gerard might be able to pose a question to you at this time.

Mr. GERARD. We have been led to understand that the Johnson-O'Malley contracts that are currently in effect with Indian groups have been based on a solicitor's opinion regarding the Johnson-O'Malley program. Could you clarify that either now or for the record.

Mr. HAWKINS. May I clarify that for the record?

Mr. GERARD. If they are based on a solicitor's opinion, I would like to have that opinion for the record also.

Mr. HAWKINS. All right.

[The opinion follows:]

MEMORANDUM

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., March 26, 1971.

To: Commissioner of Indian Affairs.
From: Associate Solicitor, Indian Affairs.
Subject: Proposed contract with the Miccosukee Corp. for the operation of the Miccosukee Indian Agency.

This responds to your memorandum of March 22, 1971, requesting our review of the proposed contract with a corporation chartered by the Miccosukee Tribe.

We do not question the authority of the Miccosukee Tribe to create and charter the Miccosukee Corporation for the purposes of entering into and carrying out the proposed contract. The power of Indian tribes to charter business corporations for limited purposes, derived from their inherent internal sovereignty and implied in and incidental to the express powers granted to the governing body by the tribal constitution, was recognized in Solicitor's Opinion M-36781 (August 25, 1969), and we believe the reasoning of that opinion is applicable to the situation here considered.

The Miccosukee Corporation thus created is, we believe, a legal entity which may properly be described as a "private corporation" capable of contracting with the United States under the Johnson-O'Malley Act of April 16, 1934, 48 Stat. 596, as amended, 25 U.S.C. § 452, for the purposes therein described, viz: "for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory."

The purposes of the proposed contract with the Miccosukee Corporation are couched in terms of the administration of a comprehensive educational and social welfare program for the Miccosukee Indian people in the vicinity of Frog City, Florida. To the extent that the performance required by the corporation, and for which appropriated funds will be expended in payment, conforms to the stated purposes, the contract is within the ambit of the Johnson-O'Malley Act. We believe that the acts to be performed by the contractor may be fairly construed as authorized by the Johnson-O'Malley Act.

EARLE D. GOSS.

MEMORANDUM

JULY 13, 1971.

To: Commissioner of Indian Affairs.
From: Associate Solicitor, Indian Affairs.
Subject: Authority of the Bureau of Indian Affairs to enter into a contractual agreement with two Sioux Community Colleges.

In a memorandum dated May 10, 1971, you requested our opinion as to whether the Bureau has authority under the Johnson-O'Malley Act (Act of April 16, 1934, 48 Stat. 596, as amended, 25 U.S.C. §§ 452–454), or otherwise, to provide funds to two Sioux Community Colleges located in South Dakota.

The two colleges involved are the Sinte Gleska College Center of the Brule Sioux at Rosebud, South Dakota, and the Lakota Higher Education Center of the Oglala Sioux at Pine Ridge, South Dakota. According to your memorandum and supplementary information provided by your staff, each of the community colleges involved is incorporated under the laws of South Dakota, and each tribe is organized under the authority of the Indian Reorganization Act.

The Johnson-O'Malley Act authorizes contracts to be entered into with "private corporations", and while we have not had an opportunity to review the articles of incorporation or other corporate documents of the two colleges, based upon information supplied to us that the colleges are incorprated under state law and assuming that the type of educational services that the colleges propose to furnish conform to the stated purposes of the act, it is our opinion that both colleges would qualify as "private corporations" within the meaning of the Act.

It is to be noted that your memorandum also states that the colleges are "tribally chartered," and it is not entirely clear whether this refers to the chartering of a corporate entity by the tribe itself pursuant to an exercise of its inherent internal sovereignty, or whether it simply refers to a designation by the tribe of the college as the entity which is to meet the higher educational needs of the tribal members. We feel that since both colleges are in fact said to be incorporated under state law, the problems discussed in our memorandum to you of March 26, 1971, regarding the tribal corporation known as the Miccosukee Corporation, can be avoided, and it is not necessary to determine whether the two colleges would qualify as "private corporations" under the "tribal corporate entity" approach used in the Miccosukee case.

Although contracts for educational services have in the past almost exclusively involved primary or secondary education, it is our opinion that a literal reading of the Johnson-O'Malley illustrates that the act itself imposes no such limitation. The act authorizes the Secretary to enter into a contract "* * * with any State or Territory, or political subdivision thereof, or with any State university, college, or school * * *", and it is therefore our opinion that the act does authorize the contracting for higher educational services of the type proposed by the community colleges in the present case.

In your letter of June 21, 1971, to Senator Mundt, you indicate that you are researching the Intergovernmental Personnel Act of 1970 (Public Law 91–648, 84 Stat. 1909) to determine if the Bureau can detail or assign employees to an institution of higher education and thus meet some of the specific requests of the colleges in this manner. As you state in your letter, this authority has not been used by the Bureau or Department to date; however, it does appear to open new avenues of assistance to meet the higher educational needs of Indian peoples.

Title IV of the act adds a new subchapter to Chapter 33 of title 5, United States Code, and Section 3372 thereof provides:

> (a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of an executive agency may arrange for the assignment of—
>
> (1) an employee of his agency to a State or local government—for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. * * *.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of an executive agency to an institution of higher education; * * *.

Both the Senate and House Reports in discussing Section 3372(b) have the following to state:

> Private as well as public institutions of higher learning would come under the purview of this provision. [S. Rep. No. 489, 91st Cong. 1st Sess. 1969) p. 17; H.R. Rep. No. 1733, 91st Cong. 2d Sess. (1970) p. 17].

The United States Civil Service Commission on April 5, 1971, filed for publication in the *Federal Register* a new Part 334 to Subchapter B of Chapter I of Title 5 of the *Code of Federal Regulations* to prescribe regulations for the administration of the aforementioned title IV of the act. Section 334.102(d) [36 *Federal Register* 6488] defines "institution of higher education" to mean "a public or private 4-year college or university or a technical or junior college."

Although because of the relatively recent enactment of Public Law 91–648 there does not appear to be any precedent within the Department for the type of temporary assignment of employees proposed, since both of the colleges involved clearly appear to qualify as "institutions of higher education" as that term is used in the act and defined by regulation, it is our opinion that the general provisions of Section 3372 quoted above are authority for the temporary assignment of Bureau employees to the colleges, assuming of course, that all requirements of Title IV can be met. In this regard, we call your attention to the fact that while the requirements of Section 3372 are worded in rather general terms, the regulations promulgated by the Civil Service Commission, praticularly §§ 334.105 and 334.106, are quite specific in requiring a written agreement between the Executive Agency and the institution of higher education recording the responsibilities and obligations of both parties, written concurrence by the employee, and periodic reporting as required by the Commission.

Since Section 3372 uses the phrase "State or local government" a question arises as to whether under this section of the act a Bureau employee could be temporarily assigned directly to a tribal governing body. In the past, we have pointed out that an Indian tribal government might qualify as a "public agency" for purposes of Federal grants-in-aid [see for example Solicitor's Opinion M–36709 dated August 1, 1967], however, neither the actual definition of "local government" set forth in Section 3371 nor the legislative history of the act as set forth in S. Rep. No. 489, 91st Cong. 1st Sess. (1969) and H.R. Rep. No. 1733, 91st Cong. 2d Sess. (1970) sheds any real light on the problem of whether the term could be validly construed to include a tribal governing body. In reviewing the Department's legislative file on S. 11 which was enacted as Public Law 91–648, we note that on August 5, 1969, the Department sent to the Director of the Bureau of the Budget a report on S. 11 in which it was specifically recommended on page 3 thereof that S. 11 be amended to include governing bodies and instrumentalities of American Indian tribes. Since Public Law 91–648 did not contain the amendatory language suggested by the Department, we feel that Indian tribal governing bodies would not be included in the term "local government" in light of the clear implication in the Departmental report that the term was not, without amendment, broad enough to include such tribal bodies.

In conclusion, we note the fact that Representative Aspinal in his letter of April 9, 1971, to the Secretary, points out that in a letter dated April 6, 1971, Representative Haley advised Assistant Secretary Loesch that he disagreed with the proposed use of the Johnson-O'Malley Act as authority for the contract with the Miccosukee Corporation referred to above, and requested that the Department seek a proper legislative base for such programs before completing the contract. Representative Aspinall indicates that he joins in that request. It is not entirely clear from Representative Aspinall's letter whether his reference to the Miccosukee Corporation indicates an objection to the use of a tribal corporate entity as a "private corporation" under the Johnson-O'Malley Act, or whether his objection is to contracting with any corporation for educational services, even where the corporation is incorporated under the state law, if in fact it is created at the instance of an Indian tribe so as to come within the ambit of the act. If his objection relates only to the former, it is our opinion that the status of the colleges as corporations under state law would avoid the objection; if, on the other hand the actual objection is the latter one suggested, we feel that while the

Representative's request may not be legally cognizable by this office in rendering an opinion on the applicability of the Johnson-O'Malley Act to the present proposals, the letter and the request raise policy considerations for the Bureau, and in such policy considerations we respectfully defer to your own judgment.

EARLE D. GOSS.

Senator ABOUREZK. Would you please describe the manner in which Johnson-O'Malley is used to support Indian students living in bordertown dormitories but attending public schools? How are these students counted for reimbursement to the school district?

Mr. HAWKINS. If memory serves, Mr. Chairman and I will correct this for the record in the event that I am incorrect, the contracts with the various school districts where bordertown dormitories exist provide for full payment by the Bureau of Indian Affairs of the cost of educating those children in that school district. I believe that in some instances those children have also been counted for State aid but I would have to get that information for the record. If that is the case, then, of course, they have gotten double funding, but I will have to get that for the record, Mr. Chairman.

Senator ABOUREZK. Thank you. If you would do that we would appreciate it.

[The information follows:]

In those instances where Indian students cannot live at home and attend public schools, a contract is signed with a public school district to permit these students to live in a dormitory situation and attend the local public school. The public school district is reimbursed for the educational services provided to these students. The Bureau of Indian Affairs pays the room and board expenses. The public school district is reimbursed for the total cost of each student enrolled.

Senator ABOUREZK. Would you describe to the committee the type of research projects that would be funded in S. 1017 if enacted?

Mr. HAWKINS. Let me just give you one example. I think that not nearly enough research has been done as to factors that might keep Indian children in public schools. We currently have some minimal research going on at the moment as to the factors which make children drop out of public schools. That might be only one example, but goodness, the range would be very wide indeed.

Mr. GERARD. Mr. Hawkins, at the present time the Bureau is funding a number of special projects, I believe, at Penn State, Harvard, and several other colleges and universities. As I understand your authorities now they are limited to the extent that you really do not have project money that is necessary then to finance Penn State and Harvard projects out of regular operating funds. Is that correct?

Mr. HAWKINS. That is correct, Mr. Gerard, out of the so-called higher education fund which we receive.

Mr. GERARD. Would the R. & D. proposal of 1017 be useful to the Bureau in supporting such projects so you would not have to draw the money out of the scholarship funds?

Mr. HAWKINS. Yes, sir.

Mr. GERARD. This type of thing would be helpful?

Mr. HAWKINS. I hadn't really contemplated that kind of R. & D., but you are right, that could be certainly funded.

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Senator ABOUREZK. In part F of 1017, on page 24, I would like to know if you feel the authorization is sufficient to carry out the mandate in that part?

Mr. HAWKINS. Which section?

Senator ABOUREZK. Part F on page 24.

Mr. HAWKINS. Yes, sir; I do.

Senator ABOUREZK. I have one question left and it is a matter of digging out some information for us which shouldn't be too complicated. I wonder if you would provide for the committee the total amount of Johnson-O'Malley funding for each of the past 10 fiscal years and the separate State allocations for that funding?

Mr. HAWKINS. Yes, sir, Mr. Chairman. Would it be useful to include in that the number of Indian children funded?

Senator ABOUREZK. Yes.

Mr. HAWKINS. All right, I will do that for you.

[The information follows:]

JOHNSON-O'MALLEY APPROPRIATIONS BY STATE FOR 10-YR PERIOD, FISCAL YEARS 1965–74

Area/State	1974	1973	1972	1971	1970	1969	1968	1967	1966	1965
Total, appropriation	$25, 352, 000	$25, 352, 000	$22, 652, 000	$19, 652, 000	$16, 452, 000	$11, 552, 000	$9, 952, 000	$9, 452, 000	$8, 654, 000	$7, 898, 000
Aberdeen:										
Nebraska	670, 000	673, 000	550, 000	400, 000	282, 000	240, 000	170, 000	135, 000	125, 000	170, 000
North Dakota	740, 000	750, 000	590, 000	450, 000	450, 000	310, 000	270, 000	235, 000	225, 000	200, 000
South Dakota	1, 640, 000	1, 650, 000	1, 530, 000	1, 335, 000	1, 138, 000	745, 000	650, 000	630, 000	530, 000	500, 000
Albuquerque:										
Colorado	287, 000	286, 081	255, 000	250, 000	235, 000	170, 000	134, 385	124, 800	101, 300	110, 927
New Mexico	1, 488, 000	1, 487, 919	4, 878, 000							
Anadarko: Kansas	102, 000	80, 000	55, 000	50, 000	23, 000	20, 000	15, 000	15, 000	11, 300	10, 000
Billings:										
Montana	1, 080, 000	1, 080, 000	875, 000	710, 000	495, 000	180, 000	118, 000	107, 300	78, 000	100, 000
Wyoming	135, 000	135, 000	110, 000	100, 000	16, 000	20, 000	15, 970	15, 225	15, 000	18, 000
Juneau: Alaska	4, 859, 000	4, 859, 000	4, 295, 000	3, 569, 000	2, 519, 000	1, 485, 000	950, 800	1, 010, 800	636, 925	610, 341
Minneapolis:										
Minnesota	1, 350, 000	1, 350, 000	1, 150, 000	850, 000	670, 000	375, 000	265, 000	250, 000	222, 000	200, 000
Wisconsin	460, 000	460, 000	540, 000	425, 000	288, 000	235, 000	180, 000	170, 000	140, 000	125, 000
Iowa	150, 000	150, 000		135, 000	53, 000	55, 000	65, 000	40, 000	32, 000	32, 959
Michigan	140, 000	120, 000	150, 000							
Muskogee:										
Oklahoma	2, 140, 000	2, 125, 000	1, 905, 000	1, 550, 000	1, 015, 000	580, 000	550, 000	500, 000	520, 000	460, 000
Mississippi	15, 000	10, 000	10, 000	10, 000	15, 000	7, 000				
Navajo:										
New Mexico	2, 000, 000	2, 000, 000	(1)	2, 553, 000	2, 225, 000	1, 655, 000	1, 524, 895	1, 411, 925	1, 298, 079	1, 225, 000
Peripheral Dorms	2, 105, 000	2, 105, 000	(1)	1, 750, 000	1, 800, 000	1, 620, 000	1, 657, 000	1, 551, 500	1, 410, 225	1, 110, 251
Phoenix:										
Arizona	3, 785, 000	3, 835, 000	3, 975, 000	3, 900, 000	4, 055, 000	3, 370, 000	3, 000, 000	2, 908, 200	3, 001, 000	2, 771, 522
Nevada	245, 000	245, 000	205, 000	190, 000	175, 000	95, 000	90, 000	86, 000	80, 000	60, 000
Utah	20, 000	10, 000	5, 000	10, 000						
Oshrin Hospital							4, 000	4, 000	4, 000	4, 000
Portland:										
Idaho	485, 000	485, 000	475, 000	450, 000	380, 000	195, 000	159, 950	147, 250	124, 000	115, 000
Washington	1, 025, 000	1, 025, 000	900, 000	790, 000	600, 000	175, 000	120, 000	100, 000	91, 251	75, 000
Oregon	71, 000	71, 000								
Sacramento: California	350, 000	350, 000	189, 000	150, 000						
Southeast Agency: Florida	10, 000	10, 000	10, 000	25, 000	18, 000	20, 000	12, 000	10, 000	8, 920	
Total enrollment	102, 335	93, 767	86, 765	78, 758	72, 065	66, 542	62, 676	57, 746	54, 848	49, 745

[1] Included with Albuquerque.

Senator ABOUREZK. I have one other question. The Congress appropriated funds earmarked for construction of pubic schools on several Indian reservations such as Rocky Boy in Montana and one or two others in North Dakota. Why were these funds impounded?

Mr. HAWKINS. These funds were impounded as a result of the need to provide for a cooling of the inflationary trend in this country, as were construction funds for a number of other projects nationwide funded by the Federal Government. I understand that all of the funds will be released as of the 1st of July of the year and that those construction projects will get underway.

Senator ABOUREZK. It was only $500,000 for Rocky Boy itself?

Mr. HAWKINS. That is correct, but they were part of a larger impoundment concerning both public school and BIA funding construction.

Senator ABOUREZK. I just have a comment to make and I don't expect you to respond to it at all unless you want to.

We talked earlier with HEW people about the impoundments they made in the Indian health money and, of course, now we are talking about Indian education money being impounded to stop "fueling the inflationary fires," I am curious to know why the Indian people themselves have to contribute to this great effort on the part of the Nation to stop inflation, yet neither the military nor the space program has been asked to do that. I don't expect you to answer that, but I think it is a lame excuse on the part of the administration each time wehearit, and I expect that as soon as the national security arguments—run out, there will be some other excuse as to why education and health needs can't go forward and not destroy the economy.

I doubt very seriously that $500,000 is going to destroy the economy of the country as far as Federal spending. I wanted to say that for the record.

Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

Mr. Secretary, I am very pleased to hear from you this morning and I know that you take a very practical look at the problems involved, Mr. Hawkins, and all of you here. We all have the same goal and that is to have the very best education program obtainable for our Indian youngsters, but we have so much criticism of the educational program of our Indian children.

For the record what is the Bureau's present position regarding Indian education? In other words, are we making progress or standing still?

Mr. KYL. No; I think Mr. Hawkins can respond to that. He is the individual who administers the programs, the head of the Office, and I think he could respond to that directly, sir.

Mr. HAWKINS. I think the Bureau has made very substantial progress in Indian education in the past 5 to 10 years with the help of the Congress. The funding for Indian education has increased substantially—we have been able to do things which we have never been able to before.

I cite one example—4 years ago we had 1,500 Indian students who were being assisted by the BIA in colleges. Today we have more than 13,000 Indian students in colleges. We hope this will increase in the years to come. I might say that 10 years ago we had almost nothing

in the way of special education programs for Indian kids who had handicaps. Today we estimate that probably one-fourth of the Indian kids who have handicaps are being assisted in one way or another through special education programs. This is not to say that we have solved the problem, not to say we have gone as far as we need to go. We need to go much, much further, but I don't think in terms of the resources made available and the programs that are being developed that we are completely at the bottom of the heap.

Senator FANNIN. I certainly agree that there has been progress made, but I also know of the tremendous criticism that is being made and I feel very sincere about the obligation of the Federal Government to assume this obligation, to assume the cost of Indian education programs where the reservation children are concerned.

What is your objective for the use of the Johnson-O'Malley fund, basic education in lieu of the tax base on enrichment or supplemental funding?

Mr. HAWKINS. Our basic direction is for enrichment and supplemental funding rather than for basic program. However, I think we do have to recognize that in some places, without Johnson-O'Malley funds, there just would not be sufficient money for a basic program, and in those instances I think consideration has to be provided.

It seems to me that the bill under consideration would go pretty far toward resolving that particular problem.

Senator FANNIN. Personally, I feel that funding the basic costs of education is absolutely essential and that the Federal Government has the obligation and should furnish the funds. In lieu of the nonexistent tax base and for many other reasons, I can't agree that it should just be for supplemental, although I think supplemental is very important, but when we talk about the impact funds that have been available and then not being available now, we talk about all the programs, I think the Federal Government is relaxing rather than carrying through and increasing the support of Indian education.

Would you agree that it does cost more in educating our youngsters? In many instances, I think you are familiar with it, where the public schools have picked up the differential and have not received the funding for the cost involved.

Mr. HAWKINS. No question about that, sir.

Senator FANNIN. If you were asked what factor stands out as a major contributor to poor performance among Indian students which would you choose?

Mr. HAWKINS. I would choose the general poverty of life on Indian reservations, the economic level at which most Indians or many Indians live on reservations. I think that we are fooling ourselves if we feel that education alone is going to provide the major difference for the future of the Indian kids who are now in school. I think we are going to have to attack the problem on a total basis, in particular providing the economic impetus to Indian reservations for jobs, and once the jobs and the economic base is sound and secure, I think we will find a dramatic increase in the education levels of Indian kids.

Senator FANNIN. I certainly agree with you, and we have worked in the State of Arizona trying to get more industry on the reservations, and develop more economic opportunities on the reservation.

We do have many barriers, as you know, but I am very pleased to hear you express your conclusions in the manner in which you have, and I think this would help considerably in solving some of these problems.

I continue to hear there exists a high dropout rate among Indians attending institutions of higher learning. What is the extent of the dropout problem at the present time?

Mr. HAWKINS. At the present time the best figures that we have for Indian young people in institutions of higher education on a nationwide basis show that the dropout rate is about 12 percent. I would hasten to say this is down from a dropout rate of 19 percent 4 years ago, and we anticipate that as we are able to better educate those young people going into colleges, that the dropout rate will decrease.

Mr. KYL. May I add one factor? In some of the special Indian education programs, we have now turned to a discontinued education program. If it is necessary for the Indian man or woman to drop out of school for a time, we now make provision in many institutions for taking them back in at a short time later so that there is no interruption, no disruption in the training. In this respect I guess these figures might be distorted a little bit, but I think it is forward looking policy that has been adopted.

Senator FANNIN. Do they count those people in the dropout rate?

Mr. KYL. Can you answer that?

Mr. HAWKINS. The policies with regard to dropouts are governed by the policies of the institution concerned, and one college may have a different policy than another with regard to when a young person is counted as a dropout. We depend on satistics from the institutions to determine the dropout rate and some will not count, for instance, a student who comes in and says for what reason he is going to have to discontinue school for a period of time, but says that does plan on coming back.

Senator FANNIN. Has this same procedure been followed previously so you have a comparison?

Mr. HAWKINS. No; it is relatively new.

Senator FANNIN. Has the Bureau itself made any effort to direct a program to meet this problem? You have partly covered that but do you have any definite program to meet the dropout problem other than what you have stated?

Mr. KYL. The answer to that question is, "Yes." Again it would vary among the institutions. But on those through which BIA has a most direct control there is a well-established program now. It does not operate without difficulty. The basic part of the program that I think is crucial is this, whether the individual drops out or whether he finishes the training and takes a job. We do have a much better evaluation program which sees the institution following that youngster, trying to get him back in school if he is temporarily out, following him in his occupational pattern after he has finished the training. This followup is a very, very important matter and it is being employed with much greater emphasis today than it has in the past. The same thing is true in public school education and non-Indian education.

Senator FANNIN. Then you are communicating with the schools, the institutions, in this regard and working with them as far as trying to curb the dropout problem?

Mr. KYL. Yes, sir.

Senator FANNIN. Has the Bureau considered establishing a program to assist college and university counselors in dealing with the Indian students?

Mr. HAWKINS. Yes, sir, we have. In a few instances we have directed funds to special tutoring and special counseling. The trouble is that those funds also must come from our higher education allocation and we have had such a demand on it that we have not felt we are able to divert many of those funds for that purpose when so many applicants for scholarships are coming in.

Senator FANNIN. Has the Bureau ever considered making available to the colleges and universities a team of professional counselors to evaluate on tight Indian counseling programs?

Mr. HAWKINS. Yes, sir, we do have a very good evaluation team that can be available. I am not aware that we have used—no, we have not used the evaluation team to look at these particular problems. Maybe we should.

Senator FANNIN. I would think it would be essential to do so. We are trying in every way possible to curb the problem and to assist the schools. I hope that you will.

Do you see "Indian control" as a basic policy of the Federal Government toward Indian education, or as part of a more comprehensive program? In other words, what are your goals?

Mr. KYL. Sir, I don't believe I understand exactly.

Senator FANNIN. When you talk about Indian control, do you see it as a basic policy of Federal Government for Indian education, or as part of a more comprehensive program, what is your goal in that respect?

Mr. HAWKINS. The goal is to provide for whatever is desired—where it is desired, the control of the local education program by Indian people.

Senator FANNIN. When we are talking about public schools on the reservation, how does this tie together?

Mr. HAWKINS. That, of course, is a more complex problem than the BIA-operated schools. In some instances Indian school board members are in the majority and there is actually Indian control of that public school district by Indians. In other situations where that is not the case, we do provide or attempt to provide for an Indian voice in relationship to the use of Johnson-O'Malley money or other funds by having a parent committee or a committee formed of Indians who advise the school district regarding the use of those funds and their effect on their children.

Senator FANNIN. If the Congress should approve legislation providing for increased control will the department provide professional staff to assist them?

Mr. HAWKINS. That is our intent, certainly, sir.

Senator FANNIN. Mr. Chairman, I would like permission for my legislative assistant Mr. Rick Lavis to ask a few questions.

Mr. LAVIS. This is such a rare occasion for the staff to ask questions, you will have to bear with me. I have just a few now to ask.

Senator ABOUREZK. This is sponsored by the new democratic and open rules of the Interior Committee.

Mr. LAVIS. Is it your policy to deemphasize boarding school education now?

Mr. HAWKINS. Yes; it is our policy to deemphasize the boarding school education.

Mr. LAVIS. How are you implementing that?

Mr. HAWKINS. In several ways. First of all, by the construction of more facilities on reservations where children can live at home or close to home and go to school.

Second, by the new emphasis on the construction of highways and roads on reservation areas so that more day schools can be built and bus routes can provide service to the various homes. These are the two major ways. And funding contract schools also.

Mr. KYL. His word was "deemphasize" the boarding school.

Mr. LAVIS. What has been done to provide classrooms closer to elementary children's homes? Maybe you could provide us with information of how many children of that young age are boarding or having to leave home from their parents?

Mr. HAWKINS. Let me provide that for the record.

Mr. LAVIS. If you could provide any other information as to how close schools are, what progress you are making in that area.

[The information follows:]

Location	Classrooms	Number of Students	Spaces on reservation boarding schools from ORBS	
			Students	Classrooms
Fiscal year 1967:				
Newhalen, Alaska	1	30		
Kodiak-Dormitory			150	5
Akiachak, Alaska	2	60		
Tooksook, Alaska	2	60		
Kotzebue, Alaska	2	60		
Many Farms, Ariz			1,020	34
Rock Pont, Ariz	9	270		
Gray Hill, Ariz			1,020	34
Santa Rosa, Ariz	5	150		
Porcupine, S. Dak	5	150		
Total	26	780	2,190	73
Fiscal year 1968:				
Atka, Alaska	1	30		
Mondalton, Alaska	3	90		
Togiak, Alaska	4	120		
Chevak, Alaska	2	60		
Kipnuk, Alaska	2	60		
Quinhagak, Alaska	2	60		
Wainwright, Alaska	2	60		
Savoonga, Alaska	2	60		
J. F. Kennedy, Ariz	2	60		
Kyle, S. Dak	6	180		
Peever, S. Dak	3	90		
Sisseton, S. Dak	6	180		
Total	35	1,050		
Fiscal year 1969:				
Tetlin, Alaska	1	30		
Deering, Alaska	1	30		
Gambell, Alaska	1	30		
Emmonak, Alaska	1	30		
Sleetmute, Alaska	1	30		
Golovin, Alaska	1	30		
Noorvik, Alaska	1	30		
Alakanuk, Alaska	1	30		
Venetie, Alaska	1	30		
Pilot Station, Alaska	1	30		
Chocktaw, Miss	16	480		
Belcourt, N. Dak	26	780		
Loneman, S. Dak	4	120		
Total	56	1,680		

Location	Classrooms	Number of Students	Spaces on reservation boarding schools from ORBS	
			Students	Classrooms
Fiscal year 1970:				
Aberdeen:				
Allen	1	20		
Lower Brule	1	20		
Cherry Creek	1	20		
Standing Rock	2	40		
Twin Buttes	1	20		
Fort Totten	1	20		
Loneman	1	20		
Kyle (Little Mound)	1	20		
Albuquerque:				
Isleta	2	40		
Jemez	2	40		
Santa Clara	1	20		
Laguna	4	80		
Acomita	2	40		
Zia	1	20		
Navajo:				
Lake Valley	1	20		
Marianno Lake	1	20		
Cottonwood	2	40		
Wide Ruins	1	20		
Seba Dalkai	1	20		
Pine Springs	1	20		
Rough Rock	1	20		
Teec Nos Pos	1	20		
Cove	1	20		
Lukachukai	3	60		
Phoenix:				
Second Mesa	1	20		
Cibecue	1	20		
Cedar Creek (J.F.K.)	1	20		
Cherokee	2	40		
Total	39	680		
1971 kindergarten construction:				
Aberdeen:				
Fort Thompson	1	20		
Little Eagle	1	20		
Bullhead	1	20		
Dunseith	1	20		
Navajo:				
Low Mountain, Ariz	1	20		
Red Rock, Ariz	1	20		
Pinon, Ariz	1	20		
Rocky Ridge, Ariz	2	40		
Alamo, N. Mex	1	20		
Narlini, Ariz	1	20		
Pueblo Pintado, N. Mex	1	20		
Juneau:				
Chevak	1	20		
Mount Village	1	20		
Emmonak	1	20		
Phoenix:				
Lehi	1	20		
Moencopi	1	20		
Total	17	340		
1972 kindergarten construction:				
Aberdeen:				
Red Scaffold, S. Dak	1	20		
Fort Totten, N. Dak	1	20		
White Horse, S. Dak	1	20		
Loneman, S. Dak	1	20		
Albuquerque:				
Taos, N. Mex	1	20		
San Felipe, N. Mex	2	40		
San Juan, N. Mex	1	20		
Juneau:				
Kipnuk, Alaska	1	20		
Mapakiak, Alaska	1	20		
Unalakleet, Alaska	1	20		
Kiana, Alaska	1	20		
Kwathluk, Alaska	1	20		
Tununak, Alaska	1	20		
Kotlik, Alaska	1	20		
Phoenix:				
Second Mesa, Ariz	1	20		
Santa Rosa, Ariz	1	20		

Location	Classrooms	Number of Students	Spaces on reservation boardng schools from ORBS	
			Students	Classrooms
Navajo:				
Pinon, Ariz	1	20		
Red Lake, Ariz	1	20		
Crystal, N. Mex	1	20		
Nehnanerad, N. Mex	1	20		
Rock Point, Ariz	1	20		
Total	22	440		
1973:				
Albuquerque: Santa Clara, N. Mex	1	20		
Aberdeen:				
Fort Totten, N. Dak	0			
Loneman, S. Dak	0			
Mandaree, N. Dak	1	20		
White Shield, N. Dak	1	20		
Juneau:			200	6
Bethel, Alaska	1	20		
Pilot Station	1	20		
Gambell				
Navajo:				
Chi Chil Tah, N. Mex	1	20		
Rocky Ridge, Ariz	0			
Kinlichee, Ariz	1	20		
Phoenix:				
Kerwo, Ariz	1	20		
Vaya Chin, Ariz	1	20		
Cibecue, Ariz	1	20		
Total	10	200		
Grand total	305	5,170	2,390	79

Mr. KYL. May I respond to that in illustrating the problem we have. Back in 1961 the Navajo Tribe indicated they wanted to have their high school youngsters closer to home. They are sent 400 to 500 miles away from home up to Brigham City to a BIA school. To the present time the BIA has tried to construct classrooms on the Navajo reservation at the strategic locations based on population, need, and so on. Therefore, the contemplation is that we will phase out that school at Brigham City and take these people who would attend that school back to the actual reservation area.

Well the school board that operates the Brigham City school doesn't like that idea much, but the tribal council has asked us to provide the schools back at the reservation. There are some impediments toward achieving that purpose, but it is our purpose there and in other instances to abide by the desire of the Indian tribe.

Mr. LAVIS. Part of our concern, Senator Fannin's concern, has been the inability of the Public Law 815 program to deliver the necessary construction funds to public schools serving Indian children on the reservation.

Mr. Hawkins, you have been traveling throughout Indian reservations for a number of years. Could you assess for us the effectiveness of that program at the present time? Have you seen the public schools serving Indian children; are they adequate or inadequate?

Mr. HAWKINS. I would have to respond, Mr. Lavis, that there are many, many inadequate public schools and that the backlog of construction for public schools serving Indian kids is very large. We were directed, as you may recall, by the House subcommittee last year to do a study of the construction needs and we have estimates now that there

is a backlog of construction need somewhere in the neighborhood of $80 and $150 million right now needed. These are public schools.

At the present level of funding, Public Law 815 is not meeting that need.

Mr. LAVIS. This study, and I have seen the preliminary report, is citing $80 to $150 million backlog?

Mr. HAWKINS. Yes.

Mr. LAVIS. The Department of HEW has provided us with their eligibility list for funding under 815 in which there are 39 schools and applications totaling some $45 million. Those are the ones that have eligibility right now, and you are going beyond that. You are obviously talking about other schools as well.

Mr. HAWKINS. We are talking about other schools also. We are making what I believe will be the most comprehensive facility need study ever made of schools educating Indian kids.

Mr. LAVIS. Let me ask you a couple of questions about S. 1017. If S. 1017 should become law, how would the Department go about allocating such construction funds? Is there any point of reference that you might want to use in doing so, have you given any thought to that yet?

Mr. HAWKINS. We have only given preliminary thought to this particular problem. Clearly there would have to be a method for application which has not been thought through yet. There would have to be a method of assigning priorities based on a whole series of things, including the bonding ability of that school district and the numbers of Indian children in it, the resources available to it. I really would hesitate at this point to do more than to say that we would have to begin developing the methodology by which we would allocate the funds. I suspect we would want to go to our National advisory education board to get their opinion. We would want to review it with the committees of Congress and then finally implement it.

Mr. LAVIS. What you are saying, it seems to me, is to indicate that what you are going to have to have is some reorganization of the duties or responsibilities of present offices in the bureau, or perhaps establishing a new office itself to handle the construction portion if this bill should be enacted. Would you agree with that?

Mr. HAWKINS. That might be required.

Mr. LAVIS. I only have one other series of questions.

You were asked a few minutes ago by the Senator with regard to progress of Indian education—just recently a report was issued by the U.S. Civil Rights Commission concerning the economic, health, and education problems of the Indians in the southwest, specifically, New Mexico and Arizona, in which they cited again a series of measurements or statistics which they used to justify their concern about the quality of Indian education as well as health and employment. At the same time, they cited another series of figures which were used some 4 years ago in the special subcommittee on Indian education report.

Let me ask you if the following are still true. This is from that Senate Committee's special report: "Forty thousand Navajo Indians—nearly a third of the entire tribe—are functional illiterates in English." Is that still true today?

Mr. HAWKINS. I find it difficult to respond to that, because I don't have any more recent statistics.

Mr. LAVIS. More recent than 4 years?

Mr. HAWKINS. More recent than 4 years ago, that I am aware of. We may have them.

Mr. LAVIS. Let me go down the list and you can respond whether you have them or not.

Mr. KYL. May I make a statement? What is in this case the definition of the term "functional illiterate"? There are many adult Navajos, a high percentage of adult Navajos, who are not fluent in English, don't write English. They do speak Navajo. Are we talking about the number of adult Navajos who do not speak or write English, or understand English?

Mr. LAVIS. Mr. Secretary, you are getting ahead of me. I will make my point when I get through here and I think that will satisfy your question.

The average educational limit of Indians is 5 school years.

Mr. HAWKINS. Improved.

Mr. LAVIS. Drop out rates are twice the national average?

Mr. HAWKINS. I believe that is decreased some, but still high.

Mr. LAVIS. Only 18 percent of the students go to college. The national average is 50 percent.

Mr. HAWKINS. With the availability of additional funding, a number more go to college than did 4 years ago.

Mr. LAVIS. Only 3 percent of the Indians enrolled in college graduate. The national average is 10 percent.

Mr. HAWKINS. That has improved substantially.

Mr. LAVIS. The point I am trying to raise here—and perhaps I should pose it in the form of a question—is whether or not the statistics are on point? Are they current, are they satisfactory, are they complete, are they appropriate, are they relevant?

Mr. HAWKINS. The statistics are out of date by now, Mr. Lavis, and we are in the process of developing a new set of statistics, and in concert with HEW who now have new concerns about Indian education, and I hope that before many more months have passed a new statistical set will be available which will indicate where there have been improvements and where, perhaps, there have not been improvements.

Mr. LAVIS. Could you tell me a little bit about the Bureau's capacity for evaluating statistics or getting the statistics, getting that kind of data by which you make those kinds of judgments? Obviously, as legislators we are continually confronted by these figures as justification for adopting new policies or modifying existing ones. It seems to me that it is time that we confront the truthfulness of such statistics, or measurements, themselves. If our policies toward Indian education is to make any sense, we must have reliable statistics by which to measure progress or lack of it.

Mr. KYL. This is a very difficult statistical base, and it is almost impossible to evaluate one set of statistics over another. Let me get very basic about this.

When we try to settle a Navajo-Hopi dispute we try to find out where the people are living. We take census figures and even a perfunctory review of those census figures indicates that at best they are inadequate. We take pictures. We have sets of pictures of the area,

aerial photographs, showing the number of hogans. We compare the sets of pictures, one more recent with one in the past, to find out now where the location of hogans, that were not there 4, 5, 10 years ago. Then it is a process of going to each one of those places to find out whether it is a second residence on a sheep area or whether it is the sole residence. The number of people varies by month to month, and the best you get is a trend.

We know, for instance, that the basis for the statistics today contain different standards than it did 5 years ago or 10 years ago. As an illustration, the poverty level is a constantly accelerating thing. The tendency, the trend is about all that you can measure.

In the case of the Zuni Tribe, I believe next year they will graduate more college people than they have graduated in all time to this date. This is the right trend. I think it is Secretary Butz who says, if you are 1 mile from hell and moving toward it you are worse off than if you are 1 foot from hell and moving away from it.

Every statistic we have on dropouts, college graduates, on the number of children in school, is improved. But the results certainly are not satisfactory yet. The ultimate goal is to see to it that all of the children have the opportunity for advanced education. We will also try to follow up those who have dropped out so we can get them back into school.

Education is not simply a matter of classrooms and teachers. Also involved are the economic status, distance, a whole lot of factors, which obviously have to be improved. There is no lack of desire to improve Indian education.

We have wasted a lot of money, we have misdirected a lot of money. That situation is better. We think either of the bills we are considering will be a measurable help in improving the situation further because they do answer what we recognize as specific problems which have genuine impact.

Mr. LAVIS. I can't quarrel with what you are saying. All I am asking is, should Congress be aware of providing you with the tools and necessary resources to better equip yourself to organize for statistical capacity? That is all. Do you need additional authorization for acquiring the technological capacity to give us better figures?

Mr. HAWKINS. Not really, Mr. Lavis. We are not at this point organized in terms of a major research effort to provide these kinds of statistical detail, and I guess we may need to do more in this direction.

Mr. LAVIS. Thank you.

Senator ABOUREZK. Mr. Secretary and members of the staff, that concludes the questions we have, and I want to thank you very much for your attendance at the hearings again today. We appreciate the information that you have given us and also for your very apparent dedication to improving this situation.

Mr. KYL. We do want to work with you. I reiterate, we are at your beck and call.

Senator ABOUREZK. The next witness is Mr. Valentino Cordova, chairman of the All Indian Pueblo Council, from Albuquerque, N. Mex.

Do you have people with you, Mr. Cordova, or are you by yourself?

STATEMENT OF VALENTINO CORDOVA, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL, ALBUQUERQUE, N. MEX.; ACCOMPANIED BY MEMBERS OF THE BOARD OF REGENTS; JUAN B. ABEITA, VICE CHAIRMAN AND PAST GOVERNOR OF ISLETA PUEBLO; GILBERT LUCERO, GOVERNOR OF ZIA PUEBLO; GOVERNOR CLYDE SANCHEZ OF ACOMA PUEBLO; PETER CHESTNUT, EXECUTIVE DIRECTOR OF THE BOARD

Mr. CORDOVA. I have people with me.

Senator ABOUREZK. Have them sit at the table and please introduce them as they are seated.

Mr. Cordova, before you introduce the members of your panel, we have just received your written statement which is several pages long and you have a number of amendments that you recommend in this statement. I wonder if we might ask you rather than to read the entire statement along with the amendments, if you might summarize your opposition. I see you are opposed to the bill. Would you, or any members of your staff summarize why you are opposed to it, without reading all of the technical amendments?

Mr. CORDOVA. This is what I intended to do. I had been in touch with Mr. Gerard prior to this and the detailed testimony will be submitted, but I did want to summarize what we had submitted.

Senator ABOUREZK. Fine; your entire testimony will be inserted in the record and printed in full.

I want to also compliment you and your group for the suggestion which has been written in the bill on page 20, as part D, the youth intern program, section 210. We want to thank you for your suggestion which has been incorporated in the bill because it is a valuable, very useful thing in this entire Indian education program. This is something recommended by your group last year.

Mr. CORDOVA. Thank you.

Senator ABOUREZK. Please proceed, and I would like you to start by introducing your panel.

Mr. CORDOVA. The gentleman at my far left is Governor Clyde Sanchez of Acoma Pueblo, the gentleman next to him is Mr. Gilbert Lucero, the governor of Zia Pueblo and the gentleman next to me on my left is our executive director for the Johnson-O'Malley program. Mr. Peter Chestnut. The gentleman on my right is the former governor of Isleta Pueblo, Juan B. Abeita. These are all members of our New Mexico Board of Regents for the Johnson-O'Malley program.

Mr. Chairman, members of the committee, the testimony submitted by our delegation on behalf of the All Indian Pueblo Council and the New Mexico Indian Education Board of Regents can be summarized as follows.

We oppose passage of this bill as it is written. In its present form it proposes no new idea in Indian education, but pulls into one act provisions currently found in the Johnson-O'Malley Act, Public Law 815, the act authorizing the Neighborhood Youth Corps, and education bills which give money to colleges and universities. To accomplish the ends of the bill as written, all that is required is adequate funding for these existing programs.

In certain areas, such as requiring funds to be used for basic support instead of supplemental programs to meet the special needs of

Indian students, the bill seems to retreat from progress already achieved.

We, however, believe that the Senate wishes to continue on the path of greater Indian involvement in education. For this reason we suggest the following amendment:

One, change the definition of "Indian" and "tribal Governing body" to fit the historical method of selection of tribal officials used by most Pueblo Tribes.

Senator ABOUREZK. I wonder if we might try to discuss each one of these as you go through them. How would you change that definition?

Mr. CORDOVA. Historically the Pueblo Indians have not had an elective scheme where the majority votes for the tribal leader.

Senator ABOUREZK. And you don't have one now?

Mr. CORDOVA. Sixteen of our Pueblos do not elect our Governors. There are three that do elect our Governors. However, 16 of them are appointed by the religious head of the Pueblo.

Senator ABOUREZK. I think we can incorporate language that will take care of that, because a lot of tribes do have elected bodies, but I think we can make it inclusive to Indian groups who do not elect them according to the most recent process.

Mr. CORDOVA. We just didn't want to be left out.

Senator ABOUREZK. Go ahead.

Mr. CORDOVA. Two, all Federal employees to be detailed to Indian tribes for periods mutually agreed upon, rather than only for a specified time period.

Senator ABOUREZK. Which section does that refer to?

Mr. CORDOVA. Page 7, line 9, where it specified that Government employees can be detailed for 3 to 6 months, and 3 more months, if necessary.

Senator ABOUREZK. Thank you. That is a good suggestion. We will take that into consideration on the markup of this bill.

Mr. CORDOVA. Three, require the Secretary of Interior or Health, Education, and Welfare to contract with Indian tribal groups to provide services if they so desire.

Senator ABOUREZK. Where are you specifically referring to there?

Mr. CORDOVA. Page 5, lines 18 and 19, section 102.

In other words, we are opposed to the word "discretion".

Senator ABOUREZK. We thank you for your suggestion. Let's proceed.

Mr. CORDOVA. Four, delete sections 203(a) (4) and (5) which require the funds to go for basic support and which spell out the kinds of supplemental programs which can be funded.

Senator ABOUREZK. Would you give your reasoning behind that.

Mr. CORDOVA. Apparently what we interpret in the law is that the Johnson-O'Malley funds would be channeled to go to basic support. In New Mexico none of the Johnson-O'Malley funds are used for basic support. A 100 percent of those funds go to supplemental programs.

Senator ABOUREZK. This is Mary Gereau. I would like her to be up here to assist.

Mrs. GEREAU. The situation varies from State to State and we didn't write the bill just to fit New Mexico. In some States they would have to have operating money. It is not required that you to have it, but it makes it permissible. In some States they wouldn't be able to have school without these funds.

Mr. CORDOVA. I realize this happens in Minnesota and probably Oklahoma.

Mrs. GEREAU. The point is you would not have to get it in your State, but in some States they could, so your suggestion that it be deleted would prohibit the States that need it from getting it. We can clarify it to take care of the situation.

Mr. CORDOVA. I hope so because I don't trust the State department of education in New Mexico and they will interpret that they would have the leeway to do that.

Senator ABOUREZK. Thank you. Please proceed.

Mr. CORDOVA. Five. Delete section 203(a)(9) which permits Federal funds to be given to a school district for bordertown programs.

Senator ABOUREZK. Your reason for that?

Mr. CHESTNUT. The feeling here is that these students are eligible for Public Law 874 funds already and the testimony that we heard earlier indicates that Johnson-O'Malley funds are being used to pay for the total amount of the education of that student.

Again, in New Mexico, if a bordertown student comes from New Mexico he is eligible for State aid, and this takes care of all the sources of funds which a school district normally receives for any child which attends.

In the case of a student coming from out of State there are provisions for out-of-State tuition. This is very common in districts which are on the borderline, for example, the Gallup School District which includes portions of the Navajo Reservation. Students—they receive out-of-State tuition. Our suggestion here is to use the out-of-State tuition device rather than Johnson-O'Malley funds, and we feel this could be used as encouraging the district from which the child comes to avoid having to pay out-of-State tuition to the district where he chooses to go, and this would be an incentive to improve its programs so he would want to stay home.

Mrs. GEREAU. The law as written provides that if the student is in a bordertown school and is a resident of the State in which the school is located, he would receive the State aid as you suggest, however, if you take a student from another State, as sometimes happens—specifically in special schools where you move a student from Utah down to Arizona for special education—it is unrealistic that the State of Utah would transfer the funds. In that case the child would be paid for with these funds from this program. But if he is a resident of the State, the State aid must be paid for that child in the school.

Mr. CHESTNUT. The bordertown programs that we are familiar with, the ones in Albuquerque, are students who come to attend high school, not for any special program.

Mrs. GEREAU. And the State aid would be paid for those kids.

Mr. CORDOVA. No, they come from out of State. They come from Arizona or Utah.

Mrs. GEREAU. This is the point. There is no way to recover that money from Arizona or Utah.

Mr. CHESTNUT. And we are suggesting that there be a way to recover it.

Mrs. GEREAU. I think you would have tremendously expensive litigation that would drag on for years. They would probably have to amend their laws to make it permissible for them to transfer money out of one State to another.

Mr. CHESTNUT. They do already.

Mrs. GEREAU. Some do and some don't.

Mr. CORDOVA. The chief of public school funding in New Mexico is in agreement with us in going this route rather than using Johnson-O'Malley to pay for the kids.

Mrs. GEREAU. We will consider it further.

Senator ABOUREZK. Please proceed.

Mr. CORDOVA. Six, require Indian community education committees in all school districts, and give the committees authority on program decisions even when the school board has an Indian majority.

The bill says wherever there is an Indian majority on the board, committees are not necessary, and we feel, particularly in one school district where we have a majority school board, we find that some of these people are more or less approaching the education of Indian students in a WASP type of education, and we feel after our experience of 1 year with education committees, that they are in a better position to promote Indian education rather than the board itself.

Mrs. GEREAU. How is that school board selected?

Mr. CORDOVA. It is voted upon.

Mrs. GEREAU. If the people don't like it, can't they elect a new school board?

Mr. CORDOVA. Yes; they can do that.

Mr. CHESTNUT. I think it is not a question of not liking it so much. That in the Dulcey situation with the Johnson-O'Malley funds, this gave all funds to the school district, and for this coming year we were asked by our representative from Dulcey for the tribe who is also on the Board of Education, he said, could he set up a committee.

Mrs. GEREAU. You can.

Mr. CHESTNUT. The thing is that he felt it would be the board that could use this device, having another arm here, and the reason that our suggestion is made is to recognize that a school board meets once a month and has many responsibilities, and that to promote the local involvement that there be no need to make an exception. After all, there aren't that many school districts that have Indian majorities, but that a local committee would be a useful way of increasing parental involvement in any case, even where there was a majority.

Mrs. GEREAU. I think we can meet the situation by a very simple amendment to change it to "may." Some other Indian groups had testified they didn't want an advisory committee if they already had an all-Indian school board. I think we can correct it by changing it to permissive.

Mr. CORDOVA. We are trying to get an all-Indian school board in all our districts.

No. 7, have the State advisory council be responsible for advising on all Indian education policies, and have it be composed of delegates selected by each local committee.

At present I think we have nine educational committees and what we are suggesting here is that a representative from each of the committees be placed on the State aid advisory level in order to give the Indian input.

Mrs. GEREAU. I think that could easily be worked out in the contract. If you say every Indian group has to be recommended, you would wind up with several hundred people on your advisory committee in

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Alaska where each individual village is considered as a separate tribe, so I think that detail could be worked out in the contract.

Mr. CORDOVA. We can buy that if you would leave it out of the bill.

Mrs. GEREAU. We will see.

Mr. CORDOVA. No. 8, delete section 203(c). There is no need for a contract with the State if program administration will be handled directly by Indians.

Mrs. GEREAU. The purpose of that was in the bill there is a great deal of statistical work that would have to be done in a State that has a number of different tribes, for example, Montana, where you have several different tribes.

The purpose of this particular authorization is to provide somebody in the State Department who would not supervise or control, but would be there to do the statistical significance, figure out the tax levies, all that which has to be put together to base an amount for the contract if it goes to the Indian tribes or the State Department or wherever, you need some kind of assistance on the staff of the State Department and they would not have that kind of assistance to provide advisory and technical assistance, but not control.

Mr. CORDOVA. I think the feeling we have is that since New Mexico could perhaps become a true cultural State, I think they have a commitment to provide this person out-of-State funds rather than Johnson-O'Malley funds.

Mrs. GEREAU. I would say they have a moral obligation, and I would be very practical and say most States don't do it unless they get the Federal assistance, so the alternative is going to be they won't have it in most States. We can change the word to "may" instead of "shall."

Mr. CORDOVA. Point No. 9, amend parts B and E to have the inservice and research money go directly to tribal groups.

Senator ABOUREZK. To which page are you referring?

Mr. CHESTNUT. Part B is page 18 of the bill, and part E is found on page 23.

Mrs. GEREAU. This particular part B is a proposal to provide assistance for the training of Indians to be not only teachers but principals, administrators, guidance counselors, the librarians, the whole scope of personnel for education. If the money went to the tribes it would take a tremendous appropriation for the tribes to set up a college program for training these people.

Mr. CORDOVA. I don't think this is what we are suggesting. What we are suggesting here is have the money go to the tribes so they can subcontract with the universities because our experiences with the universities, especially in New Mexico, has been such that they charge a tremendous overhead and very little of the money does go for this actual type of training for Indian people, and we notice this through OEO, OEO contracts, contracts under HEW, and we can't really see any benefit unless the entire tribal groups themselves can control that money and subcontract to the universities. I think we would have more control and appreciate this better if this was the way it went.

Senator ABOUREZK. We can't answer it here, but I think we will bring it up to the committee, because it is a matter worth debating and considering.

Mr. CHESTNUT. If I might make a comment here. When you bring it to the committee, we mentioned briefly in our testimony that we have done this on a small scale already in terms of approaching the universi-

ties in New Mexico with our ideas for certain courses that we wanted taught, and we found by doing this we were able to get courses that could more focus on the needs of the Indian students and educating Indian students in a way that the general education courses already provided didn't quite meet.

What we are suggesting here is that by having it come through the tribal group——

Mrs. GEREAU. That they would have more impact on the institute of higher education to do what you want them to do rather than putting Indians in routine programs.

Mr. CHESTNUT. Exactly. The needs can be more specifically met because there is this requirement right at the inception of the program to see that it is met.

Senator ABOUREZK. I can't speak for the full committee, but I, personally, think you have a good idea there. Please proceed.

Mr. CORDOVA. Point 10, amend part C to require a local district to be bonded to capacity and to have used some money for reservation schools before releasing additional funds for construction.

Senator ABOUREZK. Thank you, that is another good suggestion.

Mr. CORDOVA. We have several schools in our area that have not been bonded to capacity and are telling our committees or tribal groups to go to BIA or the Federal Government for more construction money, and we refuse to do that unless they bond themselves.

Senator ABOUREZK. Please proceed.

Mr. CORDOVA. Point 11, the supervisor of the youth Indian program should be required to be a local Indian.

Senator ABOUREZK. No argument there.

Mr. CORDOVA. Point 12, regulations for implementing this act should be prepared with representatives of Indian tribes—selected by them—being involved prior to their publication in the Federal Register.

Senator ABOUREZK. I have no argument with that. I think we can offer an amendment to that effect as well. I think what you are really talking about is what is known as Indian self-determination. I don't have any argument with that concept or implementing that concept.

Mr. CORDOVA. The reason why, I would reiterate that is because we have had a very sad experience in the past 2 weeks where HEW for title IV has selected Indian people. And we have a representative from some Pueblo that we never heard about, and I don't know who did the selection.

Senator ABOUREZK. Is there difficulty in finding Republican Indians?

Mr. CORDOVA. Yes; there is. If you can find them registered.

In conclusion, Mr. Chairman, it is our feeling that the bill as written is unsatisfactory. Our experience with tribal control of Johnson-O'Malley funds has taught us the value of having flexibility in the kinds of programs which can be funded. The present Johnson-O'Malley law gives us this flexibility to meet the special educational needs of the Indian students in each school district. We have proposed several changes in the draft bill which would make its range closer to the present Johnson-O'Malley Act.

Unless Indian tribes have some room to select the kinds of programs that will best meet the needs of Indian students in that area, there will be little reason for them to contract to administer these funds.

Finally, there has been some question regarding the role of Johnson-O'Malley funds now that title IV has been enacted. We feel that the two acts are not identical in scope: title IV is primarily intended to aid school districts in developing special programs for Indian students in the public schools.

Johnson-O'Malley then becomes available to provide funds to local Indian communities so that they can work to solve educational problems themselves on the reservation. We feel that this two-pronged approach has much to recommend it. For the coming year, approximately 30 percent of our Johnson-O'Malley funds will be going directly to Indian communities. With the release of the title IV funds, we hope to see this percentage increase in future years.

Senators, on behalf of the tribes represented here today, I wish to thank you for allowing us to testify regarding the impact of this bill on our Indian people. Any criticism or changes we suggest are merely there to underline our commitment to seeing that our tribes are truly able to have a significant role in making their futures. It is in that spirit that we came here, and we will be glad to answer any questions that you may have regarding our ideas.

Senator ABOUREZK. I have no further questions on this. I think we did it pretty well going through with each one and asking about each one.

I want to just comment on your testimony. I sincerely appreciate your coming up here with these ideas and changes and I guess you know what the legislative process is like, it is all give and take, and you don't ever get 100 percent of what you want, I wish we could, at least I wish I could, but I personally support the great majority of your suggested changes. And I will do what I can to convince the rest of the committee that we ought to really undertake Indian self-determination because that is what we are supposedly after, I would just like to ask you one question. I assume you would change your position on the bill then, and withdraw your opposition to it, if we can get a substantial number of these through?

Mr. CORDOVA. Yes; I think with these changes we would go for it, but as it stands now we can't.

Senator ABOUREZK. I really commend you for coming up with these ideas and the criticism. We appreciate it very much. They are well thought out and very well done.

[The prepared statement of Mr. Cordova follows:]

PREPARED STATEMENT OF VALENTINO CORDOVA, CHAIRMAN, ALL INDIAN PUEBLO COUNCIL

Thank you. My name is Valentino Cordova, and I am here representing the 19 Pueblos of New Mexico as Chairman of the All Indian Pueblo Council. Together with the Jicarilla and Mescalero Apache Tribes, we have a contract with the Bureau of Indian Affairs to administer Johnson O'Malley funds for the 12 public school districts where our children attend classes. The tribes created the New Mexico Indian Education Board of Regents to oversee the use of the Johnson O'Malley funds.

With me here today are several members of the Board of Regents: Juan B. Abeita, Vice-Chairman and past Governor of Isleta Pueblo, Gilbert Lucero, Governor of Zia Pueblo and member of the Board, Governor Clyde Sanchez of Acoma Pueblo, board member, Peter Chestnut, Executive Director of the Board.

The proposed bill S. 1017 has been discussed both by the Board and the Tribal leaders. All felt that the Board should come to this hearing to inform the committee of our experiences in administering Johnson O'Malley founds this current year, and to tell you how this proposed language would strengthen or weaken our

united effort to improve the education of Indian children in our public school districts.

Going through the proposed bill, S. 1017, we find several items that deserve comment.

On p. 4, line 5: 4(b): This definition of an Indian for purposes of the Act makes no provision for those tribes who were terminated by the Federal government. We feel that if the bill is intended to assist *all* Indian students in public schools that the definition should be expanded to include members of terminated tribes. We suggest adding, after the semi-colon on line 17, the words "and any tribes whose trust relationship was terminated since 1940."

On p. 4, line 18–19: (Sec. 4(c)): Sixteen of the 19 Pueblos still select tribal officials in traditional ways that have endured for centuries. Rather than specifying "elected governing body" we suggest the words "duly constituted authority" of any tribe be used instead.

On p. 5, line 18–19: (Sec. 102): This language permits the Secretary of Interior, in his discretion, to enter into a contract with an Indian tribal organization to provide the services described in the Act. We feel that permitting this discretion is probably unwise. In order for the 21 tribes represented on the Board of Regents to attain control of the Johnson O'Malley funds for their school district, we had to travel to Washington, D.C. several times, and overcome a very strong effort by the New Mexico State Department of Education to keep control of these funds. We know of tribes in other areas who want to control their Johnson O'Malley funds, but lack of political muscle to do so.

Giving the Bureau of Indian Affairs discretion in this crucial matter of whether or not to contract with Indian groups does not further the goal of Indian self-determination, but instead puts the B.I.A. Area Office in the position of power-broker. We feel that deleting the words "in his discretion," on line 19 and replacing them with "and directed" would put the initiative and direction as mentioned in the Findings and Policy sections of the bill with the Indian people, rather than keeping ultimate discretion with the bureaucracy where it has been all these years.

On p. 6, line 7: (Sec. 103): The same suggestion changes are recommended here as for Section 102. While we feel there may be certain *administrative* reasons for limiting the minimum number of students to be permitted in an individual contract with a tribal organization (to keep administrative overhead from swamping a program), these matters can best be dealt with in the preparation of regulations. For this reason, we request that representatives of tribal organizations, particularly those who have contracted to administer funds appropriated under the Johnson O'Malley Act, be involved in the preparation of regulations. Specific language to achieve this end is included in the comments on Sec. 221.

On p. 7, line 9–10. (Sec. 105(a)): Delete the words "not to exceed ninety days" and replace with "mutually agreeable to both parties." Many times a task is not completed in a neat time period; this proposed amendment would explicitly recognize this fact and permit the job to be well done, even if it takes longer than expected.

On p. 7, lines 22—p. 8, line 4 (Sec. 8): We recommend the deletion of this proviso altogether. Again, if the purpose of making a grant or detailing a Federal employee to a tribal group is to get a job done, there is no need for devices like this "set-off." It seems like an attempt to weaken the effort being made to carry out the contract provisions. The money ultimately comes from the same Federal source; this appears to be a bookkeeping device which could be used to the detriment of Indian people.

On p. 11, lines 2–15: (Sec. 202): In keeping with the idea of Indian control discussed in the purpose of the bill, this section should be modified to require that tribes be involved in the contract process, and no contract should be made between the U.S. Government and the State without the consent of the Indian tribes affected.

PART A

On p. 11, line 24: (Sec. 203(a)(1)): "Comparable school districts." We do not understand what this phrase means. Comparable to what? Comparable in size? Isolation of students? Number of Indians in the district? % of Indians in the District? Amount of total assessed valuation? Assessed valuation per pupil? Tax rate? Our confusion is perhaps more understandable if you consider the variation among the 12 districts we serve:

Number of Indian students in the district range from 14 in Penasco to 1428 in Bernalillo.

Number of pupils in district ranges from 607 in Dulce to 85,000 in Albuquerque.

Total assessed valuation of district ranges from *$643 million* in *Albuquerque* to *$1.7 million* in *Penasco*.

Assessed valuation per pupil range from *$1,296* in *Espanola* to *$20,810* in *Jemez Springs*, with the state average being $9,152.

Percentage of Indian students ranges from less than 1% in Albuquerque to 81% in Dulce.

Local tax rates range from $4.45 per $1,000 of assessed valuation in Dulce to *$12.90* in *Penasco and Albuquerque*.

This confusion already exists with the present Johnson O'Malley regulations. We have never been asked to make any comparisions in order to receive funds, and we would not know on what basis such a comparison could be made. Why bother to include a provision that cannot be enforced?

p. 12, line 9: (*Sec. 203 (a) (3)*: The same questions arise.

p. 12, lines 11–18: (*Sec. 203 (a) (4)*): This section should in our opinion, be deleted. We interpret this language as requiring that funds first go to the general operational fund of the school district.

There are several reasons for our objections.

(1) Public Law 874 provides money for the school districts' operation fund already. A look at the public school finance situation in New Mexico indicates that districts already are more than compensated for the presence of non-taxable land by P.L. 874. The State this year feels that approximately $630 per pupil is required to provide a basic education for every student in the state. To achieve this, they appropriate approximately $470 per pupil as a basic state distribution. Then local and county taxes, together with P.L. 874 funds, are calculated. If they do not surpass the $630 total, the state makes up the difference from the "equalization" fund. Of 88 school districts in the state, only 16 do not receive some equalization money. Many of the 16 districts have high concentrations of Indian students, and therefore receive a great sum of P.L. 874 funds. Thus, we feel between P.L. 874 and the state equalization formula that there is no need in New Mexico for additional legislation to provide money for basic support.

(2) In fact, such language would detrimental to an effort which we have maintained for the past several years to keep funds intended to meet the special ducation needs of Indian children separate from operation and district ledgers are kept for these supplemental funds. This language would be a large step backwards. If the purpose of this legislation is to *increase* the role of Indian communities and parents, this language is contradictory since it removes discretion, and orders it turned over to the district to help provide the basic educational program that the New Mexico Constitution guarantees to every child, including Indians.

p. 12 lines 23–24 and p. 13 lines 1–24, and p. 14 lines 1–10: (*Sec. 203 (a) (5)*) We feel that the contents of this section should best be left to the discretion of each contractor. The main purpose of the bill is to meet the special educational needs of Indian children. These vary depending on locality; the law should be flexible enough to meet those needs. Our own experience has shown that the list given in subsection A through F do not cover several areas, such as parental costs or special transportation, which local parents and students feel are necessary in their districts.

The specific areas mentioned do require some comments:

(a) Counseling is one of the great needs in our area. The problem we have is finding qualified Indian people to fill the positions. A certified counselor, the only kind permitted in the public schools must have a master's degree in guidance. Only four (4) Indian people in New Mexico are certified counselors, and none are presently working in that capacity since their skills command much higher salaries than a counselor would be paid. The past year we funded 10 counselor positions, and all were filled by non-Indians. With one exception, these individuals had little success in meeting Indian needs and almost half resigned before the school year was completed. Requiring more Counselor positions does not necessarily meet the need for relevant counseling. Our experience with the limited supplemental (over and above those services already provided by the districts) counseling programs indicate that more positions will not necessarily meet the need. Another drawback to this section is that counselors are expensive, and a rough calculation indicates that this provision alone in certain disrticts would exceed the total allocation for *all* supplemental programs made this year. This will be discussed later in Section 204 (a).

(B) The idea of curriculum development projects is also a good one. Nevertheless, the local Indian people must themselves feel a need for such a program and want to pursue it, otherwise it could easily disintegrate into another example of outsiders developing a curriculum they *think* is good for Indian students. We are currently funding a program in Bernalillo where the local education committee oversees the project. This is run outside the school system. While the district is eager to use the materials, the committee is working hard to develop an approach which the Indian people see as meeting their needs. Again, the purpose is to further Indian participation and control of the education of their children.

(C) Teacher aides are worthwhile too, but the bill does not take into account the other aides which could already be working in the school and funded by another source, such as Title I, Title VII, Title IV, or operational funds.

(D) School lunches are an entitlement to all Indian students. We have worked to get as many Indian students as possible to qualify under the U.S. Department of Agriculture National Hot Lunch Program. The rest we pay for with Johnson-O'Malley funds. The proposed language is not clear as to the entitlement portion, however. Why not specify that these funds are to be used to pay for those students who cannot qualify under the U.S.D.A. Hot Lunch Program? This would prevent supplanting in this area.

(E) Nursing Services are part of the operational expenses of a school district. This was a major area of supplanting just a few years ago, and the loophole should not be reopened by this legislation.

(F) Summer Programs are worthwhile, and we fund several, but again, only where the local Indian people request them.

(G) This language is broad enough to include A–F above: why not just delete them and leave this portion, but adding a *proviso*: that all funds shall go for supplemental programs to meet the special needs of Indian children, and in no event shall these funds be used to meet the minimum state standards which a school district must meet anyway?

p. 14, line 11, (6): As a practical matter, it is very difficult to comply with this provision. All school districts have salary schedules for professional certified employees, based in education and experience. Neither the State, nor the local administration will tolerate any deviations from these schedules.

p. 14, line 16, (7): A limit of 3% on administrative costs is very low. Currently, our contract runs about 4.3% for administration, and we feel it is not sufficient. Excessive limitations here can only serve to encourage waste and misuse of funds at the district level, since the contractor cannot adequately monitor the programs. This has been our experience, especially in the areas of program monitoring and evaluation. This despite a very good fiscal reporting system enforced by the State Budget Director. Another factor to consider is that a small contract would be especially vulnerable to this limitation.

p. 14, line 21, (8): We suggest that community education committees not be limited only to those school districts which are controlled by non-Indians. The Dulce School Board has a majority of Indians and this year the district controlled all Johnson O'Malley funds intended for the benefit of Indian children. For the coming year, however, the tribe has requested that a committee of parents be established to handle the parental cost portion of the allocation. This wish indicates that committees can provide a vehicle for a broader range of parental involvement in educational matters. Also, since the school boards is to be concerned with education of all children in the district, not just Indians, it is sometimes difficult for them to concentrate on special programs for one portion of the school district. In many cases, school boards must rely on the ideas and initiative of the school superintendent for specific program possibilities. Superintendents are very experienced in the WASP educational system, but are not familiar with developing programs to harmonize with an Indian approach to public school education.

p. 15, line 10, (9): This section authorizes expenditures for a "bordertown" program, where Indian students are brought to a BIA dormitory and then attend local public schools. Giving present funding levels for Johnson O'Malley (about $30 million nationwide) this is not a wise use of these funds. Each student is eligible to bring P.L. 874 funds into the new district, according to the State Director of P.L. 874. This amount always is greater than per capita revenue from local and county taxes. Normally when a child goes to school in a district other than which his family resides, the district in which the family resides pays money to the district where he actually attends classes. For districts within a state, the assessed valuation of the geographical area is transferred for tax purposes to the

new district. If a student crosses state lines, then the first state pays out of state tuition to the district in which the student receives instruction. If this approach were used, it would provide an incentive for school districts to improve the quality of their programs in order to retain local students, and thereby, reduce the amounts the district must pay to other districts. We favor this approach and recommend the deletion of this section.

p. 15, lines 23–25 and p. 16, lines 1–17: (Sec. 203(6)): The means of selecting members for the Indian Advisory Council on Education, described in this section, should be spelled out: One representative for each community education committee. This would insure that all areas are represented and would leave the selection of delegates in local Indian hands, thereby keeping the Council from being too political and becoming a rubberstamp for the State. The Council should have a specific role in approving the State program (not just an "opportunity to advise") and should be involved in all policy decisions concerning Indian Education programs funded through the state, including Title I, Title IV, Title VII., etc.

p. 16, lines 18–25: (Sec. 203(c)): This requires the Secretary to contract with the State whether or not the State administers any funds provided under this Act. This is a duplication of services, since the State must, by law, provide "essential professional and support staff necessary to assist local school districts". This giveaway would only encourage disruptive activities by the state if the contract were awarded to tribal groups.

p. 17; (Sec. 204(a)): The vague language of the appropriation ("such sums as may be necessary") contrasts sharply with the specific dollar amounts given in all other sections of the bill. We fear that this means that this section, in our opinion the heart of the bill, will receive token funding at best. While it is felt by some that appropriations made under the recently passed Title IV bill make programs like Johnson O'Malley or Part A of this bill unnecessary, we do not agree. We have just begun to take a truly active role in the education of our children. Closing off the source of funds that have allowed this to happen, with the hope that some new law will do a better job is unwise in our view. Let us continue on this path until *we* feel that it is not working. Therefore, we ask that a sum of $50,000,000 be appropriated for each of the first three years of this Act. This would be a 60% increase over present Johnson O'Malley funding levels, and would permit us to provide additional programs requested by local people which we are not able to fund presently due to budget restrictions.

p. 17, line 17; (Section 205): Deleting education from the activities funded by Johnson O'Malley is all right if comparable authority is placed somewhere else. We fear however that this Act, while well intentioned, does not accomplish this. The present Johnson O'Malley Act is sufficient in scope to accomplish everything set out in Part A. We have already done many of them. This Act would not confer any new power on a board in our position, but instead would place control back in the hands of the bureaucracy. This is to be avoided. Therefore, the discretion for contracting must be shifted to the Indian people, and adequate funds made available to make contracting a worthwhile activity. It appears that an assumption is being made that the funds presently appropriated for the conduct of programs, projects, and services by the Department of Interior are adequate to allow for implementation of the concepts contained in this Bill.

It must be made clear that while the Congress passes legislation authorizing the appropriate secretaries to carry out the intent of this Act, that the Executive Branch of Government through its budget process sets the national budget. Inherent in this Federal budget process are the limitations set by the Office of Management and Budget for the various Departments within the Executive Branch. As a result of "set limitations" insofar as the Bureau of Indian Affairs is concerned, the annual dollar requests identified by various tribes throughout the Nation far exceeds the limits set and imposed by OMB. Through such a procedure, there exists presently a great discrepancy between the Indians' needs and priorities and the funds appropriated.

Unless meaningful changes occur in the budget process, and Congressional Appropriations increase, the real intent will be unattainable and hence will continue to frustrate and hamper Indians in carrying out self-determined goals and objectives.

PART B

p. 18, line 9; (Section 206(a)): Insert after the word "agencies" the phrase "or Indian tribal organizations". The purpose of this amendment is similar to the one requiring Indian consultation before any contract is signed with a State. The additional language would permit Indian groups to "shop" for educational

services for development of professionals in Indian education. The funds could be used for scholarships for Indian people to attend existing programs sponsored by universities. Perhaps a lump sum subcontract to provide services beyond those ordinarily available could be negotiated between the tribal group and a university or other institution of higher learning. We feel at this point in time, Indian people are sufficiently aware of their in-service educational needs that such an approach is feasible. Currently, the Board of Regents has done this very thing, and the University of New Mexico, College of Education, is providing teachers and college credits for two courses in reading and psychology this summer. The courses and the content were developed independently by the Indian teacher aides working in public schools and UNM was selected by them as the institution who was most able to fill their needs. This approach, we feel, should be encouraged.

PART C

p. 19, line 15; (Section 208(a)): After the end of subsection (*a*), add the following language: "*provided that* the school district is bonded to capacity and has made a reasonable effort to meet construction needs for Indian students residing on Indian lands or reservations from these local funds". This amendment, we feel, is necessary in order to force school districts to meet their obligations to Indian students. Right now the Grants district has bonding capacity of $2.4 million dollars, and bonded indebtedness of $25,000. There are two high schools in the district: one in the city of Grants and one on Indian land. The one on Indian land, Laguna-Acoma High School, is badly overcrowded, and can remain open only by using Federal funds to rent portable classrooms under lease-purchase agreements. Yet the district has not spent any local funds at all for construction to relieve the situation. They say, go to Congress and get your own money if you want the school improved. This attitude, we feel, violates the constitutional rights to equal educational opportunity guaranteed by the New Mexico State Constitution and various court decisions.

Without this provision, the language as written does not significantly differ from P.L. 815. Why not fund P.L. 815 adequately? If that were done, no new legislation for construction would be needed.

p. 20, line 8; (Subsection (*c*) We suggest making the consultation between the Secretary and the local tribes affected mandatory, with the tribes' opinion being binding on the Secretary. This would strengthen the Indians' hand in negotiating with a school district, and could greatly increase the communication between the local districts and Indian people.

PART D

p. 22, lines 6 and 15; (Section 212 (*2*) *and* (*4*) These provisions appear to be subsidies to private industry (welfare for the rich) rather than to be of any benefit to Indian interns.

p. 22, line 25 p. 23 lines 1–7 (section 212(7) The language here should give preference in filling the supervisor position to an Indian person residing on the reservation where the interns are based. Otherwise, the benefits of this position and its high salary could easily go to a non-Indian.

PART E

We feel here, as in Part B, that the money should go to Indian tribal groups, to allow them to choose the areas, methods, and types of research and development to be carried out. Too often funds like this have been given to universities, graduate students have been subsidized, degrees have been earned, and reservation problems remain. Let the Indians make their own mistakes, why not try a new approach, rather than continuing to fund one which has proved itself incapable of meeting reservation level needs.

p. 24, lines 3–4; (Section 214 (b)) Delete the words "who are not employees of the Federal Government". Many highly skilled, qualified, and dedicated Indian people are employees of the Federal Government. They are knowledgeable in the ways that funding and appropriations work, and could provide valuable assistance to tribes interested in getting research projects funded under this

PART F

p. 24, lines 18–19; (Section 216) Here again, the words "who are not employees of the Federal Government" should be deleted.

PART G

p. 26, lines 11–15; (Section 220) Since programs funded under this Act are intended to benefit Indian children exclusively, there is no need for non-Indian parents to be involved in whether or not their children can enroll in classes funded by the Act. This should be an Indian policy decision; if a class is opened to non-Indians, they either enroll in it or not, as they see fit. That is choice enough. We feel, too, that the decision should rest with the community education committee, rather than with the school board, even if a majority of the members are Indians, for reasons stated above in comments to Section 203(a)(8): the board members have responsibilities to all students in the district, and the political liabilities of being responsible for such a decision could be severe. Instead, we recommend that Indian parents and students, operating free from outside political pressures, be allowed to make decisions concerning the type of education best suited for their students.

p. 26, line 17; (Section 221 (a)) Amend to read: "The Secretary, with the participation of Indian tribal groups, shall promulgate regulations . . . . . ." We feel this is necessary to prevent the bureaucracy from unduly restricting the scope of the Bill for self-serving reasons. Regulations should be drawn with an eye to facilitating Indian involvement and control, and the best way to do this is to have Indians involved in laying the ground rules.

In conclusion, it is our feeling that the bill as written is unsatisfactory. Our experience with tribal control of Johnson O'Malley funds has taught us the value of having flexibility in the kinds of programs which can be funded. The present Johnson O'Malley law gives us this flexibility to meet the special educational needs of the Indian students in each school district. We have proposed several changes in the draft bill which would make its range closer to the present JOM Act.

Unless Indian tribes have some room to select the kinds of programs that will best meet the needs of Indian students in that area, there will be little reason for them to contract to administer these funds.

Finally, there has been some question regarding the role of JOM funds now that Title IV has been enacted. We feel that the two acts has not identical in scope: Title IV is primarily intended to aid school districts in developing special programs for Indian students in the public schools.

Johnson O'Malley then becomes available to provide funds to local Indian communities so that they can work to solve educational problems themselves on the reservation. We feel that this two pronged approach has much to recommend it. For the coming year, approximately 30% of our JOM funds will be going directly to Indian communities. With the release of the Title IV funds, we hope to see this percentage increase in future years.

Senators, on behalf of the tribes represented here today, I wish to thank you for allowing us to testify regarding the impact of this bill on our Indian people. Any criticism or changes we suggest are merely there to underline our commitment to seeing that our tribes are truly able to have a significant role in making their futures. It is in that spirit that we came here, and we will be glad to answer any questions you may have regarding our ideas.

Senator ABOUREZK. It is 5 minutes until 12. I am going to adjourn this hearing until 2 o'clock this afternoon, and the next witness is Mr. Birgil Kills Straight and the members of the Coalition of Indian Controlled School Boards, and they will start the testimony at 2 o'clock.

So the hearings are now adjourned until 2 o'clock.

[Whereupon, at 11:55 a.m., the hearing was adjourned until 2 p.m., the same day.]

AFTERNOON SESSION

Senator ABOUREZK. We will resume hearing testimony from witnesses in this subcommittee. The next group of witnesses, is headed by Mr. Birgil Kills Straight, executive president of the Coalition of Indian Controlled School Boards. Mr. Kills Straight happens to be one of my constituents from Pine Ridge, S. Dak., and Birgil, I am very happy to see you here today and to receive your testimony.

We have talked at length, probably you have talked more with my staff than you have with me, on Indian education, but I know of your great interest and the great amount of time and effort and work that you put into this particular question and I look forward to hearing your testimony. Before you start I would like you to introduce the members of your panel, the witnesses that you have with you.

STATEMENT OF BIRGIL KILLS STRAIGHT, EXECUTIVE PRESIDENT, COALITION OF INDIAN CONTROLLED SCHOOL BOARDS, DENVER, COLO.; ACCOMPANIED BY FRANK LaPOINTE, ROSEBUD, S. DAK.; ALFRED REDMAN, WYOMING INDIAN HIGH SCHOOL, ETHETE, WYO.; BILL ROBERTS, ASSOCIATE EXECUTIVE DIRECTOR, COALITION OF INDIAN CONTROLLED SCHOOL BOARDS; AND LARRY MANUELITO, ASSOCIATE DIRECTOR, RAMAH NAVAJO SCHOOL BOARD, INC., RAMAH, N. MEX.

Mr. KILLS STRAIGHT. I would like to have these people introduce themselves.

Mr. LAPOINTE. I am Frank La Pointe from Rosebud, S. Dak.

Mr. REDMAN. I am Alfred Redman, from Wyoming Indian High School.

Mr. LAPOINTE. I am Frank LaPointe from Rosebud, S. Dak.

Mr. ROBERTS. Bill Roberts, presently associate executive director, formerly from Fort Belknap Reservation in Montana.

Mr. MANUELITO. Larry Manuelito, associate director, Ramah, N. Mex.

Senator ABOUREZK. Please proceed.

Mr. KILLS STRAIGHT. I would like to thank the committee for inviting us and allowing us time to give testimony. My name is Birgil Kills Straight. I am an Oglala Sioux from Pine Ridge Reservation, S. Dak., and I am the president of the Coalition of Indian Controlled School Boards, Inc. The coalition is comprised of 87 Indian school boards, education committees, and parent groups. The Coalition of Indian Controlled School Boards is the first national, grassroots, Indian organization devoted to educational reform. We started in October 1971 with four member boards and have grown to our present size in a little over a year and a half.

We are here today to submit our views regarding Senate bill 1017 entitled The Indian Self-Determination and Educational Reform Act of 1973, which, we understand, will amend the Johnson-O'Malley Act of 1934 and amendments of 1936.

The coalition welcomes and approves of the interest of the sponsors of this bill in reforming Indian education, which despite efforts at reform in the last few years, remains "a national tragedy" as described in the 1969 report of the Special Senate Subcommittee on Indian Education. We are particularly pleased that Congress appears ready to pass legislation giving Indians greater control of their children's educations. For it is lack of Indian control of Indian education which we feel is the root cause of the tragedy.

We are, therefore, prepared to support passage of Senate bill 1017 as an effort to expand the contracting and grant-making powers of the Departments of Interior and Health, Education, and Welfare in

Indian education, in particular, the extension of these powers to include, specifically, contracts and grants to Indian tribes and tribal organizations.

However, with all due respect to the efforts of the sponsors of this bill in seeking passage of legislation to reform the sorry state of education for our children, we wish to point out limitations in the bill which to us prevent it, in its present form, from living up to the high hopes expressed in its sections relating to congressional findings and declaration of policy. Until revisions are made to remove these limitations, we believe the day of full-scale improvement in Indian education will continue to elude us.

Although it can be hoped that under the expended contracting and grant-making powers lodged in the Departments of Health, Education, and Welfare and Interior in this bill, more money will flow to schools or school projects controlled by Indians, there is no guarantee that such will be done.

The basic limitation in the bill is that discretion is to remain in the Federal agencies in Washington to decide which Indians get moneys to educate Indian children. We would strongly urge revising the bill to eliminate as much of this discretion as possible.

Senator ABOUREZK. Do you have any specific language that you would recommend to accomplish that purpose?

Mr. KILLS STRAIGHT. I believe it is in here.

Senator ABOUREZK. What I would like to do is periodically interrupt if I have a question, and then you can tell me if you are going to cover it later.

Mr. KILLS STRAIGHT. Until Indians, not the Federal Government, can dictate the pace and scope for implementing Indian self-determination, we believe that Indian self-government in education will remain a distant goal.

We believe there are strong grounds for suspecting that the bureaucracies entrusted under the bill for carrying our Indian educational self-determination would, if given the broad discretion now made part of the bill, be less than enthusiastic in doing so. We have had 3 long years of experience with the Federal Government's educational agencies with powers over Indian education since the President's historic message of July 8, 1970, to see that high hopes for reform can and are often dashed by unresponsive agencies. In the message the President said:

> Consistent with our policy that the Indian community should have the right to take over the control and operation of federally funded programs, we believe every Indian community wishing to do so should be able to control its own Indian schools.

Yet, now there are still less than a dozen Indian controlled schools recognized by the Bureau of Indian Affairs.

The reason, Mr. Chairman, for this tardiness does not rest, I assure you, in any lack of interest or desire among Indians to take over the control of their own schools. The rapid growth in membership of our organization attests to the enthusiasm with which Indian people respond to the idea of self-determination in education.

No; the reason for the delay has to do with the very same bureaucracies to whom you, in this bill, are considering placing even more discretion to implement Indian education reform than they have now. We can cite examples to support our contentions:

The BIA, with principal Federal authority and responsibility over Indian education, has thwarted educational self-determination almost every step of the way since 1970. Of course, not every BIA employee has been an opponent. There are many fine, sympathetic and committed individuals in the Bureau to whom these comments do not apply, but the general behavior of the agency as an institution is far from supportive of Indian self-government, especially in education.

One, after a long internal struggle, the BIA's infra-structure in the area and agency offices have won a preeminent position of power. Area Directors, supported by agency superintendents, have effectively secured the power to veto actions to the central office, including the Commissioner of Indian Affairs. The new policy regarding Bureau action is decentralization, which places decisionmaking, including educational contracting for Indian self-determination, in the hands of area offices. It is well known that area offices, more than any other single element in the Bureau, oppose self-determination. And for very good reason. In its ultimate form, Indian self-government must logically result in displacement of the BIA's overblown bureaucracy. The area offices, Mr. Chairman, are fighting for their survival. Yes; S. 1017 would give these offices, with their built-in conflict of interest with Indian groups and tribes struggling for the power to control their own lives, the discretion to decide under titles I and II of the bill which Indian groups are to receive contracts or grants.

Two, how these area offices deal with Indians seeking education contracts has been revealed in several locations.

A. In the Albuquerque area, the pace-setting Ramah Navajo High School has still not been able to negotiate a satisfactory contract for operation of its community school for next year. The area office has simply refused to enter negotiations with the Ramah Navajo School Board in a spirit of true bargaining. Instead it has attempted to dictate most of the essential terms of the contract, including price, before negotiations even began.

B. In the Billings area, another Indian-contract school on the Wind River Reservation has had repeated problems trying to receive payments of its invoices from the area office. Advance payments to the school have been suspended, and during the past year the Indian school board has had to resort on several occasions to issuing checks without sufficient funds in the banks—with bank approval. This is certainly no way to do business.

C. In the Aberdeen area, the misuses of area director's powers in relation to Indian self-determination on the Pine Ridge Reservation have now been presented to a court. The issue concerns the failure of the BIA at the insistence of the area director there, to renew a contract for bilingual education with a private, Indian educational organization which had successfully completed the first year of a 5-year program. This area director, without notice or hearing to the private group, decided that the tribal government was opposed to the contract renewal and unilaterally vetoed explicit directives of the Deputy Commissioner of Indian Affairs and Commissioner of Indian Affairs to negotiate the renewal with the private Indian group.

D. Again, in the Albuquerque area, a parents group organized itself around educational interests in one of the Rio Grande pueblos. The group was exploring ways to take over control of a small BIA elementary day school. Upon hearing of the group's activities, the local

BIA agency education director ordered the day school principal to attend every meeting of the Indian parents group—as verified by the principal's own admission—and removed a BIA employee, who, it appears, had been to insipiring in terms of promoting self-determination from participating as an adviser to the group.

E. On the Navajo Reservation, the Rock Point Boarding School has long had an advisory school board aspiring to take over full control of the school. The BIA has promised the contract for a long time, but just within the past few weks, in a final showdown, the Navajo area office refused to issue the contract claiming that since Federal civil servants were involved in the project, the Navajo School Board could not take over control of the school. When it was pointed out that other civil servants have been successfully transferred to Indian-controlled school boards under contracts, the response from area officials is said to have been, "We don't care what happens in other areas; no Navajos are going to control civil servants on this reservation."

When it was further pointed out that 20 BIAM 6 authorizes such transfer of supervisory powers to Indians over civil servants, the response from the local BIA officials was that 20 BIAM 6 was not in effect—since it had never been published in the Federal Register—not a requirement for in-house regulations such as BIAM.

F. The BIA has just named a new Acting Director of Education Programs to replace a man who has generally won the support of Indians seeking to control their own schools. The new Director has a reputation for opposition to Indian control of BIA schools.

Senator ABOUREZK. Who are the two parties involved here, do you care to name them?

Mr. KILLS STRAIGHT. Mr. Jim Hawkins was formerly Director of that branch and he has been replaced by Acting Director Bill Brennan from the Albuquerque area.

Senator ABOUREZK. And Mr. Hawkins had won general approval from the Indian people?

Mr. KILLS STRAIGHT. Yes; he had good rapport with them.

Senator ABOUREZK. Thank you.

Mr. KILLS STRAIGHT. What makes this recent appointment so especially bothersome, however, is that it took place without any consultation with Indian groups.

Three, the bias in the BIA's infrastructure against Indian control is highlighted by yet another example. A recent study of Albuquerque area educational finances by an accountant under contract to us revealed that huge variations exist between per pupil costs within BIA schools; that contract schools are held to a stricter standard of financial accountability than BIA schools; and that BIA schools receive moneys from various line items besides education, which are not included in making per pupil comparisons between the cost of contract schools and BIA schools. Our accountant has not yet had a chance to write a full report on his findings, but as soon as he does, we will furnish this committee with a copy. Based on his preliminary findings, we would urge this committee at the very least to request a GAO audit of the BIA's area offices. We understand that no such audit has ever been carried out.

Senator ABOUREZK. There is an audit being conducted or has already concluded of the Pine Ridge Reservation Agency books. We

have not yet conducted one of the area offices, and I think it is a good suggestion.

Mr. KILLS STRAIGHT. Although our experience with HEW is not as extensive as it is with BIA, we believe that many of the same conflicts of interest between it and Indians exist.

1. In one Indian community in the upper Midwest, HEW is conducting a civil rights compliance study under 42 U.S.C. 2,000 of the local, white controlled school district with educational responsibility over the Indian children. The Indian community has long recognized that the fundamental failure of the district in educating Indians relates to the lack of Indian involvement in control of their children's educations. Yet, HEW has refused to support the Indian community's attempt to achieve basic structural reform by changing school district lines, and instead has attempted to make the school district more responsive to Indian educational needs through such measures as introducing minicourses for white school teachers on Indian culture and history. HEW has even gone so far as to explicitly exclude Indians from participating as consultants in the early stages of the civil rights study of the district, ostensibly because they could not be objective enough.

2. Title II of the bill, which focuses on public school education for Indian children, places inordinate discretion and power in State educational agencies. While there are several State education agencies which understand the unique educational needs of Indians—Wyoming, for example—many others do not. Ramah Navajo High School, as an illustration, had a great deal of opposition from the New Mexico Department of Education when it first got started.

Indian self-determination is simply at odds with Federal or State control of Indian education. And S. 1017 fails to take this circumstance into account.

In addition to this deficiency, we have noted the following other points which should be corrected.

1. Section 4(a) definition of Indian leaves out terminated tribes and members thereof, a serious gap in any bill seeking to deal comprehensively with Indian education.

2. Section 4(c) definition of tribal organization does not clearly state that Indian-controlled, private organizations are eligible for funds under the bill. This, too, is a serious gap since many if not most of the present Indian-controlled schools—Rough Rock, Ramah, and Wind River, for example—are run by private Indian school boards. Only if private Indian institutions are made explicitly eligible can adequate provisions be made for essential emphasis on the rights of parents and communities to control their children's educations.

3. There is no provision in the bill for handling the thorny question of civil service regulations and Indian takeover. A major obstacle to Indian control of federally funded schools has been the inability of the Federal Government to come up with a meaningful formula to protect the rights of Federal civil servants and Indians seeking to control their own schools. New legislation could provide a formula, for example, by suspending civil service regulations in these projects and providing for compensation for any displaced civil servants.

4. Section 106(a) reinforces a most debilitating aspect of current contracting, the heavy-handed imposition of Federal procurement procedures. These procedures are suitable to purchase of paper clips and

pencils but not to educational services from Indians. They should be suspended for all contracts under the bill.

5. Section 202 repeals the Johnson-O'Malley law, without adequate justification. In our view, Johnson-O'Malley provides ample authority for an enlightened Federal Indian education policy and program—provided procurement procedures are suspended for it—but it has not been fully implemented.

6. Section 203(b) providing for an Indian advisory council on education is basically ceremonial. What possible meaningful role could it play? It is more likely to be a rubber stamp for the State education agency than a sounding board for Indian views on education.

7. The bill will presumably, given its wording, provide as much assistance to non-Indian controlled educational institutions as for Indians:

A. Section 203(c) mandating contracts—the only mandatory contracts in the whole bill—with State education agencies affected by contracts under section 202;

B. Section 206(a) provides grants to institutions of higher education which have often secured money for the benefit of Indians without providing real service to Indians;

C. Section 214(a) authorizes grants or contracts with universities and institutions, and to individuals for research.

8. Section 203(a) (4) and (5) provide for supplanting of operating moneys by funds appropriated under title II of the bill, which is especially difficult to justify given the existence of title IV of the Higher Education Act of 1972, the Indian Impact Aid Act, which already gives districts with Indian students operational moneys.

9. Under sections 102, 103, and 104 contracts and grants can only be given to Indian tribes and tribal organizations upon request of any Indian tribe. This requirement poses a severe limitation on the range of Indian entities which can potentially qualify, since several Indian communities with legitimate grounds for seeking control of their own educational programs are not in a position to have tribal governments intercede for them with the Federal Government.

10. Section 202(a)(5) provides only 3 percent for administrative costs under contracts authorized under title II, a woefully inadequate amount, especially when compared with our findings that area offices charge 10 and 20 percent for administrative expenses in programs administered through them.

Here are some specific recommendations for strengthening the bill:

1. Preamble, congressional findings: Should include recognition of crucial educational importance of parental and community control;

2. Preamble, declaration of policy: Should include a statement underlying and supporting the right of Indian parents and communities to control the upbringing of their children;

3. Definitions: Should expand the definition of Indian to include members of terminated tribes; and

4. Section 102 should be made mandatory.

Suggested wording:

The Secretary of the Interior is authorized and directed, upon the request of any Indian tribe or organization supported by a majority of the Indian community affected, to enter into a contract or contracts.

5. Section 103 should be strengthened in the same way.

6. Section 105, add additional section:

(d) The Secretary is authorized, where appropriate, to suspend the regulations of (civil service law) to implement the policy of this Act, provided any civil servant displaced by a contract or contracts hereunder be adequately compensated by the Federal Government. For the purpose of such compensation, the amount of $------ is authorized to be appropriated for the first fiscal year after enactment of this Act, and $------ for each of the next two succeeding fiscal years.

7. Section 106(a) should be entirely reworded to exempt contracts under the act from constrictive Federal procurement laws and procedures in addition to the negotiation aspect.

8. Title II, section 202, should be rewritten to prevent bilateral relationships between States and the Federal Government in Indian education. All Federal funds for Indian education in public schools should be funneled through Indian tribes or organizations which may then contract with States if they wish. If they do not, they should be permitted to use the funds in their own schools. Suggested wording:

SEC. 202. For the purpose of providing education to Indians enrolled in the public schools of any state, the Secretary is authorized to enter into contracts with any Indian tribe or tribal organization residing in any state which in turn may contract with the state or political subdivision thereof upon such terms and conditions as are mutually agreed upon. If a tribe or Indian organization does not wish to contract in this manner with any state agency or subdivision, it may use the funds in its own schools under the provisions of Sec. 102.

9. In addition, title II should be strengthened by including a discretionary power in the Secretary to order the redistricting of State school district boundaries to provide for increased Indian control where all other efforts for reform have proven fruitless and he considers conditions of discrimination and unequal educational opportunities for Indians to be endemic or inherent. This remedy is justified upon the same basis that withholding of Federal funds under 42 U.S.C. 2000d, et. seq. and 45 CFR part 80 is.

10. Section 206(a) contracts should go only to Indian tribes, organizations, or other institutions approved in writing by them. The same applies to section 214(a).

11. Section 203(c) contracts should be made discretionary.

12. The entire relationship between titles I and II should be clarified. As they now stand, it is difficult to see the distinction between a contract with an Indian tribe or tribal organization under title I and one under title II. What would prevent using title I to write contracts with these groups or entities for use in public schools, thus avoiding the explicit application requirements under title II?

13. Appropriations for contract schools should be increased. At present only $4.5 million is earmarked for these schools out of a total BIA education budget of $180 million. And per pupil funding formulas should be reconciled with those used for the BIA's own schools.

Mr. Chairman, we have witnessed that local control is best for Indian people. The Ramah Navajo community now has 10 students in colleges in various States; they are the product of their own community controlled high school. Prior to assuming this control, the community was able to send only one or two students to college, and only one of them graduated.

Testing conducted in the Minneapolis Survival School and the Red School House of St. Paul indicate phenomenal growth rates in a short period of time for the students attending these institutions. The directors of these schools feel that the results are indicative of

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attitudinal changes on the part of students who had previously been pushed out of the schools entirely alien to their educational and social needs. We have witnessed the successes of schools controlled by Indian parents and strongly advocate that this process be extended to include every community in the Indian world who choose to do so.

We are pleased with this opportunity to make these detailed recommendations as to S. bill 1017. We hope that you will understand that we appreciate your interest and concern in our children's educations and make our criticisms in hope that the bill can be strengthened to make it even more fulfilling of its own stated hopes and goals.

Above all we would like to impress you with our belief that it is we who must ultimately reform Indian education. You can only provide the money. It is for Indian people to put the funds to work in the way they think best.

We thank you for your attention and for giving us this time.

Senator ABOUREZK. Mr. Kills Straight, I just want to say that I agree with you on that last statement. Since we didn't have this statement, I don't have any prepared questions to ask of you. I will ask the staff members, both minority and majority staffs sitting here, if they have any questions prepared that they would like to ask you, but I do want to ask a favor of you. Would you be willing to sit down with our staff and work out some of your recommended changes with them. I want to say that as far as I am concerned, the hallmark of this subcommittee, so long as I am chairman of it, will be that we intend to let the Indian people run their own affairs and that includes how the legislation should be done—at least to that extent—that the Indian people decide what is best for them, whether it be in education or any other matter, I want to thank you very much, all of you, for offering your views, and I know that we will be able to work very well with you in incorporating the changes that you want.

I would like to turn to the staff members now and see if they have any questions. I guess we are all set. Do you have anything further.

Mr. KILLS STRAIGHT. I would like to have Larry Manuelito, Bill Roberts, and Allan Frank would also like to say a few words.

Senator ABOUREZK. Go ahead.

Mr. MANUELITO. Mr. Chairman, my name is Larry Manuelito. I am the associate director of Ramah Navajo School Board, Inc. I would like to enter this statement for the record by Mr. Abe Plummer, who is the director of Ramah Navajo School Board, Inc.

As Mr. Kills Straight has stated, we are a member school of the coalition of Indian controlled school boards, and I am not going to read the statement. I would just like to add a few things from the statement in support.

Senator ABOUREZK. The statement will be inserted in the hearing record and printed in full.

[The prepared statement of Mr. Plummer follows:]

PREPARED STATEMENT OF ABE PLUMMER, RAMAH NAVAJO SCHOOL BOARD, INC.

At this writing, the Ramah Navajo School Board, Inc. has not recontracted with the Bureau of Indian Affairs for school operation monies. This is not to say that the School Board will not seek new negotiations, however.

The present "new Bureau policy" of vesting "authority" in Area Offices has developed many concerns among Indian communities who, heretofore, were in direct contact with the real authority, the Central Office in Washington, D.C. It is alleged that decentralization will bring Bureau programs closer to the people.

Bringing Bureau programs closer to the people is probably a valid undertaking. However, Indian contracting for the education of their children is *not* a Bureau program. The Ramah Navajo High School program is a Ramah Navajo community program. The Central Office in Washington, D.C. establishes policies and they are the final authority to effect these policies. Area Offices merely manage.

This newly imposed contracting relationship of Indian communities and Area Offices really amounts to the Indian communities being forced to deal with the *powerless*. Indian communities contracting programs must not be deemed subordinate and a part of the system.

Recent meetings with the Albuquerque Area Office has done much to influence this position that our School Board is having to deal now with *powerlessness*. When asked for an automatic renewal clause in the new contract, the Area Office replied ". . . it can probably be done . . ." when in fact the Solicitor General's opinion was that *it wasn't possible*. When asked for negotiating for a higher dollar amount than already determined, the Area Office deemed they had *no authority* to do so. They went further to say that they would be insubordinate if they recommended a higher dollar amount to Central Office even if the need was justified. There are many examples of this *powerlessness* that could be cited.

The real Bureau thrust is to keep the Indian community revolving in this cycle of powerlessness so there is no new thing but history repeating itself.

The Bureau at the Area level aims at frustrating developing communities through this *powerlessness* and indecision. The ulterior motive is to get the Bureau back in the saddle. The Albuquerque Area Office, in fact, said so clearly on April 3, 1973, when they said, ". . . the Ramah School Board may not wish to operate the new school plant and they might want to return the job to the BIA. . . ." The exact opposite is true. The Ramah Navajo School Board members have set goals at accomplishing and setting new records by running their own school over the next 100 years.

The Bureau requires and effects annual evaluations of the contract schools. The Bureau does not evaluate its own schools. The latter was attested to by the Bureau Director of Education on May 9, 1973, at a meeting with him in the Assistant Interior Secretary's office. We suspect the Bureau takes care of their own schools' operations involving administration, maintenance services, transportation and other "hidden costs" with padded budgets. The contract schools are required to operate on small pre-determined budgets without the "extra" that Bureau schools have. There is much inequity. This will be proven. The Bureau requires audits of fiscal management for contract schools when they don't inspect their own "backyard".

Gentlemen—we, the Indian communities, do not only want self-determination—we want equitable rights and recognition that we are *not*, repeat *not*, subordinate to the Bureau system. We are not a Bureau program. We don't need the Secretary's discretion. Let there be made provisions that will have us negotiating and dealing with those in full authority not the powerless go betweens.

Through our very recent experiences, we feel that self-determination is being intentionally blown further away from us and out of our reach.

The preamble in Senate bill 1017 is disconcerting because it lacks of certainty. It should not say . . . certain programs . . . but should say programs for Indians. It should not say . . . encourage . . . but it should say develop human resources by supporting the *right* to Indian parents to control their own education. . . . A strong preamble must set the tone of the bill that will allow Indians discretion to contract. Take school contracting out of the Federal Procurement realm because education is not a commodity like toilet paper or pencil.

Senator ABOUREZK. You may proceed with your remarks, Mr. Manuelito.

Mr. MANUELITO. Mr. Chairman, what Mr. Plummer says is in full support of what Mr. Kills Straight read in his testimony. I think that the Bureau—I think something has to be done right now, and that we cannot continue to just talk about it, and a good example is at this writing. Mr. Kills Straight has said, Ramah Navajo School board has not renegotiated a contract for next fiscal year, but this does not mean that the school board will not seek new negotiations. It is because the area officers have failed to recognize the needs of the community and have failed to come to the bargaining table and negotiate in good faith.

I would just like to say that I feel that the Bureau at the area level aims at frustrating the developing communities, of developing communities through this parlance and indecision. The ulterior motive is to get the Bureau back in the saddle.

The Albuquerque office said so clearly on April 3, 1973, "The Ramah Navajo School board may not wish to operate the new school plant and they may want to return the job to the BIA." I quote this directly from the acting director, Mr. Frank Pins, from the Albuquerque area. In fact, the opposite is true, the Ramah Navajo School members have set goals acomplishing in having them run their own school for the next hundred years.

I think that the school contracting should be taken out of the Federal procurement ground because education is not a commodity like toilet paper or pencil or anything like that.

Thank you.

Senator ABOUREZK. Thank you.

Mr. ROBERTS. In support of what Mr. Kills Straight has stated, I feel also that mechanisms which really assure—we feel that measures of accountability must really be strengthened in the bill. This could be done by establishing a national advisory board or umbrella to coincide with the title IV board. To clearly define what the board will do would also be a measure which can develop accountability.

Senator ABOUREZK. Do you disagree with Mr. Kills Straight that an advisory board is just window dressing?

Mr. ROBERTS. The way it is stated in the bill, I feel, that it is window dressing.

Senator ABOUREZK. You would like to see it have some power?

Mr. ROBERTS. Yes; if these are Indian people that sit on this board and can make determinations with respect to the national picture of Indian education, this I feel needs to be done.

Senator ABOUREZK. The difference is in the bill, which provides for a State board. There was a charge leveled during the testimony this morning that the National Advisory Board of HEW has not been representative. How would you overcome that? How would you make it representative?

Mr. ROBERTS. By establishing a process for selection of this board which the Indian people would actually have a say. The non-Indian procedure which we set forth was followed and one of the weaknesses that I feel on this procedure was that they didn't state when these nominations could be received or made and they didn't state when the selection process would be. I feel that this should also be included in any type of selection process.

Mr. KILLS STRAIGHT. The selection of that committee was really discriminating.

Senator ABOUREZK. You are talking about HEW's advisory committee?

Mr. KILLS STRAIGHT. Right, we recommended 15 people. The 15 Indian educators who have been involved in developing of the institutions as well as teaching from elementary grade to post-secondary and out of the 15, because of the fact that we won this lawsuit, which was close to $18 million, it appears to us we were reprimanded for that by not putting anyone of the educators we selected on the national scene on this board. In fact, Frank LaPoint was the only one that was in the running until the last final tally was taken, and when he found

out, when they found out he was part of the coalition board he was dropped.

Senator ABOUREZK. There is a comment floating around up here at the table that that is the price of success. Either that or it is the problem we talked about this morning of finding a Republican Indian somewhere.

Mr. KILLS STRAIGHT. That is probably what it is.

Senator ABOUREZK. Who makes up that advisory board at this time, do you have any idea? They were selected just by arbitrary appointment by the Secretary, is that right?

Mr. KILLS STRAIGHT. We felt the whole thing was political.

Mrs. GEREAU. The pont they are talking about is title IV of the Education Amendments of 1972, passed last year. That law provides for a national advisory board to be appointed by the President of the United States from names submitted by the Indian people, and the Indian people complied very well. They had hundreds of names of prominent, competent and able Indians on the desk of the Secretary by November of last year, and the board wasn't appointed until the 1st of May. It took them that long. The board is supposed to nominate the person to become the deputy commissioner of education for Indian Affairs in the Office of Education, and it was, which comes first, the chicken or the egg, because the administration was saying we can't implement and distribute the $18 million because we don't have a deputy commissioner. We don't have a deputy commissioner because we don't have the advisory board and we don't have the advisory board because we haven't appointed it.

I am very concerned that as far as I know, nobody has asked for any funding for that bill beyond June 30 of this year. There is no money in the budget, the $18 million was released but there is no money in the budget for the fiscal year which begins July 1, 1973, which is fiscal year 1974.

As far as I know there is no request before the Appropriations Committee for funding for that bill. It bothers me because the Indian people are relying on that bill far more, I think, than they should because I gather that it is not the intention of the Office of Education to fund it except this $18 million. One shot and forget it.

Do you know anything about that? Have you appeared before Appropriations and asked for future funding?

Mr. ROBERTS. Not for future funding on title IV?

Mrs. GEREAU. Nobody has. I am suggesting to you maybe you ought to write a letter to Senator Magnuson.

Mr. ROBERTS. Gerald Clifford, the executive director of the coalition has appeared before Miss Julia Hansen and recommended full funding for title IV.

Mrs. GEREAU. It is not the Secretary of HEW's budget and that is where it is authorized.

Senator ABOUREZK. Did you say somebody else had comments to make?

Mr. KILLS STRAIGHT. Mr. Redman, the director of the Wyoming Indian High School and Frank LaPoint.

Mr. REDMAN. The board of the high school just wants to support Mr. Kills Straight and I can tell you one example that we had in the area office of our last negotiation for next year.

They called us and they wanted 2 days to negotiate but they told us how much we were going to get and there was hardly any sense in negotiating. When they came down to our school to negotiate they told us how much we were going to get and that was it. Then they also stated, get another budget, a larger amount and list your priorities, which we did, but they won't listen to our priorities. They just kept telling us we were going to get the same amount of money we received this year. Actually that is a cut in our budget since the costs are higher than last year and the teachers get their annual increase. Actually it was a cut in our budget for next year.

Senator ABOUREZK. That is known as administration self-determination, not Indian self-determination.

Mr. REDMAN. That is all I have.

Mr. LAPOINT. I would like to reinforce the idea that we need more money for education for our children. For instance, last year we got a $50,000 educational contract from the BIA and because of budget limitations somewhere along the line we are stuck with another $40,000. What that means is that we really, as far as our school is concerned, we do not have a permanent sort of steady basic program fund, and that is what we are concerned about, and maybe in this law, if you could put something in there that would assure each Indian child of getting maybe a basic entitlement of some sort, that they would not be faced with this situation.

Thank you.

Senator ABOUREZK. Thank you, Frank.

I have no more questions or comments. Just a minute, one of the staff members has.

Mr. GERARD. Would it be possible for the coalition to provide the committee with some kind of breakdown of what you consider to be the average per pupil or the desirable average per pupil expenditure in those contract schools? You have how many years of experience now in operating?

Mr. KILLS STRAIGHT. Eleven. If you include those nine colleges who are members, 20. That was an outgrowth of this coalition and out of the 11, 9 are still members.

Mr. GERARD. I would think any experience you could share with the committee would be useful in trying to follow up on the recommendations. Just for the elementary and secondary level.

Mr. KILLS STRAIGHT. We will be happy to work with you on that. In this report, this testimony I mentioned briefly our accountant who was down at the Albuquerque area office. His name is, Esacpa, an Indian. He made some evaluations of what you are saying. The per pupil cost and he did it for one area office, and that area office is pretty shook up and as a result of that he is going to have to do it at all other area offices. What we wanted to do is after this is done then we can come in with facts and figures and at that time we can lay out some sort of a formula, a realistic one.

Mrs. GEREAU. Do I understand, and I hope I don't understand, you are not suggesting that this bill, title II F. which primarily speaks of public school educating some Indians where there are some Indians and non-Indians in the same school, I hope you are not suggesting this be held up pending a very needed and thorough investigation into the funding of the BIA schools, especially as it relates to the

funding of contract schools? I realize you want something done on that, but are you suggesting this be held up until that is done?

Mr. KILLS STRAIGHT. No, I think with that finding we can know for a fact the average that is being spent, and if you want it this afternoon or Monday, it could be available.

Mrs. GEREAU. Your testimony speaks very eloquently to the need for a much more sound basis for funding BIA schools and particularly those that are contract, where you point out that the BIA schools get funds other than those just earmarked for education, but when they make a contract they only give you the part that comes out of the education budget, so you are not getting, I would guess, as much money per pupil as is available in the schools which the BIA continues to operate itself which is a problem and should be approached by the Senate committee. What I am saying is I hope you are not saying hold this bill up until we get that problem settled.

Mr. KILLS STRAIGHT. No, I am not saying that. We can really work at your disposal. We can have this stuff ready by Monday.

Mrs. GEREAU. The funding thing really goes to the Appropriations Committee and this goes to an authorization committee. Well, you answered my question.

Mr. KILLS STRAIGHT. Also, in relationship to what you were saying about the contract schools, we have approximately 87 and if some of these schools, after a while, and if we can't get funds for these schools. some of these boards may get discouraged and may want to quit, and when this happens somebody is going to have to worry about it and it is going to be BIA. I think we were strengthening the concept.

Mrs. GEREAU. How many contract schools are there, elementary and secondary?

Mr. KILLS STRAIGHT. Eleven in operation right now, and there are more that are on the drawing board.

Mrs. GEREAU. But there are also members of the Coalition of Indian Control School Boards that are public schools like the Rocky Point and others?

Mr. KILLS STRAIGHT. Yes.

Mrs. GEREAU. But of contract schools, specifically where you contract with the BIA to run what was once a BIA school and is now your school, there are eleven?

Mr. KILLS STRAIGHT. In a school such as Ramah and Wind River, which are entirely new. Busby is a takeover project and there are several others. There are others such as St. Ann, Red Cloud, St. Francis, which are parochial schools now, and we are assuming control over those, too.

Senator ABOUREZK. Isn't St. Francis now controlled by the Indian School Board altogether?

Mr. KILLS STRAIGHT. Yes.

Senator ABOUREZK. How about Red Cloud?

Mr. KILLS STRAIGHT. In fact, we were the first ones to really have something coming. We were promised something like $750,000 2 years ago.

Senator ABOUREZK. Is that Red Cloud?

Mr. KILLS STRAIGHT. Right.

Senator ABOUREZK. Who were you promised that by?

Mr. KILLS STRAIGHT. Hawkins in BIA. Except for politicians at home. And we were given a bank draft of $40,000 and it was cut down to $12,000 and the money was sent out, it was stopped at the area office because by that time there was a new Chairman. This is his last year at Pine Ridge, and he stopped it entirely.

Senator ABOUREZK. You are saying the new Chairman at Pine Ridge is antieducation?

Mr. KILLS STRAIGHT. He is anti a lot of things. As a result of that for the past year we weren't able to get anything from BIA.

Mr. LAVIS. Mr. Kills Straight, on behalf of Senator Fannin we are interested in knowing what your views are on the school construction section?

Mr. ROBERTS. I will make a comment on that. We feel that construction is needed. However, it shouldn't be placed on such a high priority where it will impede upon education of Indian children. We have seen several of the States that are supposedly responsible for educating Indian children but they count the children, make a head count, and that is the basis for Indian education. In other words, the child does not really—he is not really the prime concern. It is using the child to get Federal funds.

Mr. LAVIS. For school construction?

Mr. ROBERTS. For schools; yes.

Mr. MANUELITO. Mr. Chairman, I would like to add one more thing. In getting back to the audit of area offices, Ramah was directly involved in a paper that we were able to obtain and Ramah was the only contract school in the Albuquerque area and they listed per pupil costs for all of the schools in the Albuquerque area including Ramah and they listed our total budget and as a result our per pupil cost was much higher than those of Bureau schools, but one thing they failed to point out is that Ramah has to absorb the cost of plant management, the cost of buses, administration, food services, everything else in our total budget whereas the Bureau's schools were getting these from other areas and they were not including this in the per pupil cost allocations, and they kept telling us we had no reason to cry because we had a higher per pupil cost expense and as a result of this we began to look further into this and as a result the audit began to take place and I think we were unable to convince the Bureau at this point that we should get those services which everybody is getting also because we have the same right to them.

Mrs. GEREAU. I have one last question, Mr. Kills Straight. I believe the Bureau received annually something in the neighborhood of $12 to $13 million as their share of money under the Elementary and Secondary Education Act. These funds are to go to the children in the Federal schools.

When an Indian community contracts to take over a Bureau school, do you know whether or not any of that title I money goes to the Indian contractor or are you just operating on the regular appropriations of the Bureau's budget?

Mr. LAPOINTE. I can talk to our situation. We do receive title I money because we are a contract school. However, this took a big battle to get that done, and instead of making it an across-the-board policy then, each school I think had to fight on their own in their own area to get these funds.

The other thing about it is it still comes back to, no matter how much title I funds you get you still have the basic program before these funds can be more effectively used.

Senator ABOUREZK. I want to thank you very much for your testimony and your remarks.

The next witness is scheduled as Mr. William Youpee, executive director of the National Tribal Chairman's Association, Washington, D.C. I understand someone else, other than Mr. Youpee is here, Mr. Upicksoun. Are you here, sir?

Senator ABOUREZK. Mr. Upicksoun, we are happy to have you here today and we would be pleased to hear your testimony. I understand you are one of the members of the HEW National Advisory Commission on Education, is that correct?

STATEMENT OF JOE UPICKSOUN, CHAIRMAN OF THE EDUCATION COMMITTEE OF THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, WASHINGTON, D.C.

Mr. UPICKSOUN. Mr. Chairman, I have a statement here written. My name is Joe Upicksoun and I am chairman of the National Tribal Chairmen's Association's Education Committee.

The National Tribal Chairmen's Association is very interested in the disposition of S. 1017. Therefore, we appreciate the opportunity to present our views on S. 1017.

The National Tribal Chairmen's Association would like to take this opportunity to commend you in your efforts to provide for the improvements of educational services for federally connected Indian children. It is evident that you have attempted to respond to the testimony presented in hearings by Indians on various Indian education bills introduced during the last few years. You have grasped many concerns expressed in previous testimony and have incorporated those elements into your proposed legislation. We support many of those elements.

S. 1017 contains two titles. The first seeks to add a more realistic dimension to the present promises of "self-determination" for the Indian people. The second is primarily designed to correct abuses of the Johnson-O'Malley Act, to involve Indian parents in the planning and implementation of education programs, and to permit federally recognized Indian tribes and tribal organizations or State education agencies to be contractors for Indian education.

I will comment on title I first. Title I of S. 1017 is essentially the same as S. 3157, the Indian Self-Determination Act of 1972. S. 3157 and several other related bills were introduced during the 92d Congress. Hearings on these bills were heard on May 8, 1972. The National Tribal Chairmen's Association testified on S. 3157 at that time. I would like to refer the committee to the National Tribal Chairmen's Association's testimony on S. 3157. I will, however, briefly reiterate our position on title I of S. 1017.

The National Tribal Chairmen's Association supports title I, the Indian Self-Determination Act, and recommends that this title be enacted.

As was mentioned in our testimony on S. 3157, the National Tribal Chairmen's Association has strong feelings about the trust responsi-

bility for Indian lands which is the link that holds Indians and the Federal Government in a special and unique relationship. In addition, the integrity of tribal sovereignty is of special concern to the National Tribal Chairmen's Association. We feel that Federal actions which affect Indians should recognize and support tribal self-government to the fullest extent.

The proposed title, as we understand it, will neither surrender nor absolve the U.S. Government of its responsibilities to the Indian people. It seems to provide the statutory authority that is required to assist Indians in the implementation of a more realistic Indian self-determination policy. For these reasons, we support the enactment of title I.

The National Tribal Chairmen's Association supports the provisions contained in title II. It is in line with the President's Indian message of July 8, 1970, in which he discussed the need to make certain that Johnson-O'Malley funds come under the influence of Indians as to the ways that the money is spent. The President proposed that the Congress amend the Johnson-O'Malley Act to authorize the Department of the Interior to channel Johnson-O'Malley funds directly to Indian tribes and communities. Title II would give the Secretary of the Interior explicit authority to contract directly with federally recognized Indian tribes and tribal organizations.

The National Tribal Chairmen's Association supports the concept of providing the Secretary of the Interior with explicit authority to contract directly with not only States and local institutions but with tribes and tribal organizations. We believe that this can be accomplished by amending the present Johnson-O'Malley Act to include such language. We do not feel that it is necessary to substitute part A of the proposed Indian Education Reform Act for the education portion of the Johnson-O'Malley Act. In addition, we have serious reservations about section 203(a).

While this section attempts to provide a formula which can be the basis for distribution of part A funds, we believe that the formula will be too cumbersome to be useful or to be effective. Some prospective contractors may simply choose not to deal with such a formula and not contract for part A funds. Some prospective contractors may not be able to meet the property tax rates of five non-Indian districts of comparable sized enrolledment and, therefore, lost part A funds. We recommend that part A not be enacted and that the Johnson-O'Malley Act be amended to include language that would explicitly authorize contracts with Indian tribes and tribal organizations.

Title II contains additional parts. Part B provides the Secretary with definite authority to make grants to or contract with universities, colleges, and other public or private nonprofit organizations to prepare better qualified personnel to serve Indian children in public, private and Federal schools and to increase the qualifications of existing personnel. Part C authorizes Federal aid to public school construction and renovation for public schools on or near Indian reservations if such schools are serving Indians. Parts D and E establishes an Indian youth intern program for summer employment and provides funds for educational research and development. Part F requires the Secretary to submit to the 94th Congress a proposed program on adult and continuing education, on vocational and technical careers, on early childhood development, and on higher education programs. The National

Tribal Chairmen's Association ascribes to the concept embodied in these parts.

We would like, however, to make additional comments on parts B and C. We recommend that section 206 contain a provision for Indian participation as to the type or kind of training program that is needed in schools that serve Indian children. We also note that the prospective training programs center around the educational field. We would like to point out the need for training in other areas in addition to the educational field, for example, business management, health, and other service fields. The need for schoool construction is great in both the public and Federal schools. While we recognize that part C is designed to give the BIA the necessary contracting authority to meet the great public school construction needs of public schools serving Indian students, we feel that some attention should also be given to Federal school construction. Many BIA schools are in need of renovation or in need of new buildings. We ask that the Congress also add additional construction funds to the Bureau's appropriations.

It is generally well known that the backlog for public school construction is so great that $30 million per year will not meet current construction needs. We recommend that this amount be doubled or even tripled.

Mr. Chairman, thus far I have commented on various provisions of S. 1017. There are other areas that need attention which S. 1017 does not address itself to. Attempts are being made to meet the educational and other needs of Indian children in public schools, but little is being done for Indian children in our BIA schools. We would like to recommend that you consider adding a new title to S. 1017 that addressed the growing concern of many of our people.

1. We recommend that a basic foundation program for Federal schools, under the BIA be established.

A. This basic foundation program should provide each Indian student in BIA schools with an entitlement equal to not less than the average per-pupil expenditure of the State where the BIA school or reservation is located.

B. This program should provide direct funding to Federal schools based, at minimum, on an entitlement equal to the average State per-pupil expenditure of the State in which the BIA school is located.

C. This program should provide for all Indian children from kindergarten through grade 12.

D. This program should provide local Indian schoolboards with the authority to operate those schools.

2. We recommend that three approached be used for providing direct funding under such a program, namely.

A. Direct funding to the Federal schools based on the formula mentioned earlier—number of Indian children enrolled times the average State per-pupil expenditure of the State in which the school is located.

B. Contracting to tribes for the operation and control of a BIA school, again, based at minimum on the aforementioned formula.

D. Providing for demonstration sites under a tuition voucher system with enough flexibility to provide parents of Indian children with the opportunity to establish alternative approaches to Indian education.

3. We recommend that a basic foundation entitlement for boarding school facilities be established. These funds should be separate and above educational moneys provided under recommendation No. 1.

A. This program should provide each student with a minimum level of funding equal to the cost of providing such services for children in the surrounding area.

B. Boarding programs should be designed to strengthen cultural identities where boarding schools are still necessary.

4. We also recommend that a program be established to fully meet post-secondary educational needs of young Indian adults in three areas.

A. Under graduate programs for bachelor or associate degrees.

B. Graduate programs for masters and doctorate degrees.

C. Technical, vocational, and paraprofessional programs.

5. In addition, we recommend that Title IV of Public Law 92–318 be fully funded to meet the needs of all Indian children in public schools.

6. Finally we recommend that a process be legislated to enable Indian communities and leaders with the opportunity to help select the BIA's Director of Indian Education, who would have the prime responsibility for implementing this additional title.

Mr. Chairamn, this concludes my statement.

Senator ABOUREZK. Do you have anything further you wish to add to that on your own?

Mr. UPICKSOUN. This was the position of the National Tribal Chairmen's Association. We had a committee that worked with me in getting this document so that it would be here this afternoon.

Senator ABOUREZK. I want to thank you for it. By the way, I want to comment upon some parts of this statement. I think your idea of a basic foundation program for schools is an excellent idea. I don't know, I don't think we can put it in this bill. I think it would require some field hearings and additional hearings and staff work on such a concept. I think it is an excellent idea and a good concept, and I want to express the gratitude of the committee for your bringing it up today. We appreciate it very much and I think it is something we are going to have to do in the very near future, as a matter of fact.

I also notice the attention that you paid to advanced educational programs such as undergraduate and graduate programs and I thought I might ask you what your thinking is on the community college concept that has recently sprung up both in South Dakota and Arizona. Do you like the idea, or what do you think of it?

Mr. UPICKSOUN. Mr. Chairman, I am from Alaska and we do not have any higher education beyond the ninth grade. However, the advisory school board which I have been active with for 3 years, put together a program for the Bureau of Indian Affairs to follow through on which would not only bring in the 12 grades in the Barrow, Alaska area, but it would also include 2 more years where they would have 2 years of community college. I thought that the teachers and the parents and the school board worked together to come up with a very good policy planning statement in the areas of education and I have a belief that community colleges are very healthy because those facilities are available for the community college students to take advantage of.

Senator ABOUREZK. Thank you. Some of the staff members have a question or two they would like to pose now.

Mr. LAVIS. I was interested in the comment that you had in your testimony about the use of a voucher system. I wonder if you couldn't expand on that, your reason for suggesting that?

Mr. UPICKSOUN. The condition behind the voucher system? I don't know whether anyone has ever spoken on that subject. What it means is that the parent would have a chance to send a child to any school and just simply submit a voucher.

Mr. LAVIN. You may know about that. OEO is, I believe, funding a demonstration of that particular approach, I believe, in Oakland, Calif., one of the school systems there. I was curious as to what prompted you to suggest this approach. That is all I have.

Senator ABOUREZK. Thank you very much. We appreciate your testimony.

The next witness is Mr. Lester Gemmill from the Indian desk of the Michigan State Board of Education, Lansing, Mich. As I understand it, Mr. Gemmill wishes to submit his statement for the record and stand to answer any questions that the committee might have. Is that correct, Mr. Gemmill?

STATEMENT OF LESTER GEMMILL, INDIAN DESK OF THE MICHIGAN STATE BOARD OF EDUCATION, LANSING, MICH.

Mr. GEMMILL. That is correct, Mr. Chairman.

Senator ABOUREZK. Your statement will be inserted in the record and printed in full as though it were read by you and if any of the staff members present have questions—I don't have any myself because I have not seen your statement, and it has not been given to me before this minute, so I have no prepared questions, but I will ask the staff members if they have any.

We do want to study your statement, perhaps we might submit questions to you in writing at a later time.

Mr. GEMMILL. I would like to mention we also added by request a second statement which pertains just to the amount of funds allocated on a State level and Federal level, combined, in the State of Michigan for the years 1970, 1971, 1972 and 1973. We gave a breakdown and joined them together.

Senator ABOUREZK. That is in your statement?

Mr. GEMMILL. It is a separate sheet.

Senator ABOUREZK. We would like to have that for the record. It would be valuable for the committee. We thank you very much, Mr. Gemmill for your appearance here today, and the statements submitted.

Mrs. GEREAU. I hurriedly read your statement just before I came up here and I noticed that you urged the establishment of an Indian desk in the departments of education in the States that have Indian children. It was one of your recommendations. The bill does speak to that point. It doesn't call it an Indian desk but it authorizes funds for State department of education whether or not they are the contractor and I gather you would approve that. Even though they may not be the contractor, that they should have funds so that they can assist in districts that will be dealing with the Indians who may be the contractors.

Mr. GEMMILL. That is right. Michigan has been the recipient of Johnson-O'Malley funds, this is the second year, and this was one of

the reasons why our State department felt it would be wise to establish a position in the State department to administer programs.

Mrs. GEREAU. Until you had the money from Johnson-O'Malley you didn't have an Indian office in the State department of education?

Mr. GEMMILL. That's right.

Mrs. GEREAU. When the Federal money became available then the State did begin to take recognition of this and provided a staff person?

Mr. GEMMILL. Yes.

Mrs. GEREAU. You approve of that?

Mr. GEMMILL. Yes; I believe there is a great need to coordinate not only with the Johnson-O'Malley schools but with the State at large.

Senator ABOUREZK. Thank you very much, Mr. Gemmill.

[The prepared statement of Mr. Gemmill follows:]

IN THE SENATE OF THE UNITED STATES

JUNE 1, 1973

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Testimony presented to

Subcommittee on Indian Affairs

Senator James S. Abourezk, Chairman

In Re

S. 1017, Indian Self-Determination and Educational Reform Act of 1973

Testimony presented by

Mr. Lester Gemmill, Indian Desk
Dr. Frank Hartman, Federal Liaison

of

Michigan State Board of Education
Michigan National Tower
Lansing, Michigan 48902

Chairman Abourezk and Distinguished Members of the Subcommittee:

We come to this table expressing gratitude for the opportunity to submit testimony on Senate Bill 1017, which, if enacted, would become the "Indian Self-Determination and Educational Reform Act of 1973." As representatives of the Michigan State Department of Education, we savor the realization that we are among those priviliged to participate in the development of Federal legislation for Indian governance and education. We appear as authorized representatives of Dr. John W. Porter, Superintendent of Public Instruction in the State of Michigan, who endorses the testimony presented to the Senate Subcommittee on Indian Affairs.

GENERAL COMMENTARY

I. We have in Michigan in 1973 an "official" Indian student (ages 5-18) population of 5,778 in grades K-12. Official is embraced in quotes because we allege it is heavy on the low side, attributable to our means of compiling Indian student head count---teacher reporting weighted heavily on observation. We contend there are in the United States ~~hundreds of~~ thousands of Indian students not on our Indian student population rolls. There are several reasons for this and perhaps the 3 most significant are:

1) Infirm methods employed by local school districts in obtaining Indian student population count.

2) Urban Indians pose a peculiar problem in accountability because they are lost in the big city maelstrom of bewildering numbers, constant mobility, and absenteeism which is the forerunner of drop out (Indians have a radical drop out rate).

3) The "silent titlist" syndrome of young Indians who would rather be assumed as being white than admitted as being red. It has not been popular in this country since 1492 to be Indian, is an understated rationale for the silent titlist vogue. This may be the most provocative deterrent for valid accountability.

II. We encourage the continuity of the Johnson-O'Malley Act (P.L. 74-638, as amended) trusting that until Indian affairs are adequately funded through comprehensive legislation at the Federal level, the enrichment resources of Johnson-O'Malley will continue to flow. Michigan received from this source $50,000 in 1972 and $181,256 in 1973, most of the sizable increase for 1973, compared with 1972, is because of the summer school program being introduced for the first time in Michigan.

III. We commend for your consideration that education programs for Indian people, children and adults, be administered by the Office of Education through a Bureau of Indian Education under the supervision of a deputy commissioner or assistant commissioner, but that the administration of the Johnson-O'Malley Act not be reassigned to this Bureau at the present, but perhaps in the future, particularly if Indian constituents should rally to the support of such transfer.

IV. We further commend for enactment that an Indian Desk be authorized in each State Department of Education to coordinate, evaluate, and propogate Indian education in all states, and to interpret the resultant accommodation of each state in its effort to comply with Federal and State legislation pertaining to the objectives promulgated by said legislation.

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SPECIFIC COMMENTARY

I. Title II, Part A, p. 14, lines 11-15

Proposed rewrite: (f) educational personnel serving Indians, including those in State Education Agencies, shall receive salaries, including fringe benefits, at least equal to the average salary rates of professional educators in the affected State, State Education Agency, or affected school district, whichever is applicable.

II. Sec. 204 (b), p. 17, lines 5-16.

We hope this means forward funding for the lifetime of the Act, not only for its first year of implementation. We could write pages of sad commentary on recent appropriations delays because of impoundments. Most notorious in Indian education is the $18,000,000 impounded by OMB for the Indian Elementary and Secondary School Assistance Act (Part A of Title IV of the Education Amendments of 1972). This money was released only a few weeks ago and now hundreds of school districts are feverishly attempting to meet the June 8 deadline. Education, whether Indian or general, deserves more thoughtful and sympathetic regard.

III. Sec. 203 (7), p. 14, lines 16-20.

Liberalize the per centum to a maximum of 8 per centum for administrative and consultative costs for a contractor, i.e., State Education Agency, because SEAs could be found guilty of assigning impossible tasks to a select few. The per centum should be on a sliding scale in accordance with population served, technical assistance required, and geographical expanse of area administered.

IV. Sec 207 (a), p. 19, lines 6-15.

Provide for the construction of schools, especially elementary schools, for Indian children in close proximity to the children served. It is not sufficient to state "in close proximity to any Indian reservation or other lands held in trust by the United States for Indians...." Your attention is directed to The Report of the Select Committee on Equal Educational Opportunity, United States Senate (Dec. 31, 1972), pps. VII-VIII:

> I have seen the lives of disadvantaged children all over this country on reservations, in ghettos, in migrant camps and pockets of rural poverty. Statistics can never tell the full story....:
>
> > Of the cold, military-like environment of a Federal boarding school for Navajo elementary children -- children who must spend months away from their families, often beginning at age 5.

Lurid testimony depicting the abominable results of boarding schools! There should be no boarding schools for Indian elementary children. They should be nestled in an open, warm atmosphere of a school building within daily commuting distance of their homes. Flint, Michigan, has long employed the practice of building primary units "where the kids are." These are attractive, inexpensive, durable school units designed to house grades one, two, and three. This model could be expanded to care for grades four, five and six. There is a definite trend in many school districts to return to the open classroom concept of yesteryear.

This is only an illustration of immaginative procedure which could be utilized to break the desolate boarding school custom which was perpetrated for the wrong reasons. There is unquestionably a need for school construction for Indians in the Federal sector, and some critical thinking must go into the specifications.

V. Insert in an appropriate place a means to improve the method of determining the Indian population of a school district. It is recommended that an Indian parent, or parents, from a recognized Indian Education Committee be employed to assist whenever an Indian census is needed. When the time comes that all Indians may be comfortable in the realization that they are Indians, the census problem will be reduced to little more than statistical calculations.

VI. "Indian" should be defined better than it is in Sec. 4 (a), p.4. Perhaps there should be a blood quantum included in the definition. And what about step-children of Indians, children who are 100 per centum white or black? Or adopted whites and blacks? An Indian definition might state simply that one or more ancestors, a specified number of generations ago, must have been full-blooded Indian.

Concluding Commentary

We have researched pages of testimony which you have received, or shall receive, and do not choose to revisit upon you commentary which has perhaps been registered in more attractive style than we could muster. We concur with most of it and do not contend enviously with you for the challenge of ferreting the usable out of the unusable. We do urge that a fundamental precept be welded into the legislation: freedom of choice for Indians.

In any value system, freedom of choice is coveted. Values are elements of human experience which are invested with great emotional meaning for people. Values are the main source of energy for a society.

Thank you, for the privilege of appearing before you. We stand ready to serve should you favor us with a request for additional contributions.

COMPOSITE REPORT OF STATE AND FEDERAL SCHOLARSHIP, TUITION GRANTS, VOCATIONAL EDUCATION EXPENDITURES AND JOHNSON O'MALLEY GRANTS EXPENDED FOR INDIAN PUPILS IN THE STATE OF MICHIGAN FROM 1970 - 1973

Year	State scholarship and tuition	Federal scholarship	Total
1970-71	$ 7,441.00	$ 66,750.00	$ 74,191.00
1971-72	9,882.00	175,000.00	184,882.00
1972-73	20,284.00	175,000.00	195,284.00
TOTAL	$ 37,607.00	$ 416,750.00	$ 454,357.00

Vocational Education Expenditures

1970-71	21,258.00	
1971-72	127,484.00	
1972-73	73,019.00	
Total		$ 221,761.00

Johnson-O'Malley Funds

1970-71	------	
1971-72	50,000.00	
1972-73	181,256.00	
TOTAL		$ 231,256.00

TOTAL EXPENDITURES FOR 70-71, 71-72, 72-73 $ 907,374.00

Total Expenditures By Year

1970-71	$95,449.00
1971-72	362,366.00
1972-73	449,559.00
TOTAL	$ 907,374.00

Appropriation by State of Michigan for Indian Education Position (Coordinator of Indian Education) 1972-73 $20,000.00

Senator ABOUREZK. We have a couple of distinguished gentlemen in the audience here today that I would like to call upon to recognize. Mr. Robert B. Jim, chairman of the Yakima Indian Nations. Do you have anybody else with you, you would like to introduce today?

Mr. JIM. Mr. Louis Cloud, chairman, and Mr. Johnson Meninick, a member of the Washington delegation.

Senator ABOUREZK. Very happy to have you here during these hearings today. Thank you very much, Mr. Jim.

Also, Allen P. Slickpoo, who is from the HEW subcommittee of the Nez Perce tribal executive committee from Lapwai, Idaho. Mr. Slickpoo, would you like to stand up and be recognized. Do you have anybody else you would like to introduce who is here with you.

Mr. SLICKPOO. No; I am the only one present.

Senator ABOUREZK. If you have a comment you would like to make to the committee we would be pleased to hear you.

Mr. SLICKPOO. Yes.

Senator ABOUREZK. Would you want to come up to the table?

STATEMENT OF ALLEN P. SLICKPOO, HEW SUBCOMMITTEE, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE, LAPWAI, IDAHO

Mr. SLICKPOO. Mr. Chairman and members of the committee, thank you for giving me the time to appear before you.

Although I do not have a prepared statement, and after just listening to the testimony and the statements that were made by other members or other tribal representatives and organizations I might state that I am Allen P. Slickpoo, a member of the health, education, and welfare subcommittee for my tribal council. I have also been involved with, actively involved as chairman and presently a member of the Johnson-O'Malley advisory committee of my local school district which is located in Idaho on the Nez Perce Reservation.

Although not specifically relating to the bill, S. 1017, I would like to bring out some specific things that I feel from my, what I call grassroots information, grassroots knowledge of the problems relating to Indian children in my particular school district, and I am sure that this also could apply to many Indian schools or public schools which are well integrated with Indian and non-Indian children students.

For a number of years I have been active in regard to Indian education of children, because my interest lies deep inasmuch as I have four children presently enrolled in public schools, therefore, I feel I am qualified in knowing what the problems are directly related to Indian children.

As I stated, we are pretty well integrated. We are not consolidated reservation like many other Indian tribes or Indian reservations. My reservation is pretty well checker boarded. There are school districts, public school districts located within the reservation. However, I feel that the basic problem relating to the education of the Indian child lies with the fact that the Indian children are measured with the non-Indian children as students, lacking the needs of consideration of cultural differences existing. Consequently, this causes the learning hardships or academic difficulties.

The parent advisory committee to the Johnson-O'Malley programs in my school district have made a number of recommendations relating to programs and budget in consultation with school superintendents.

However, there does exist in these consultations differences of opinion with school administrators and the Johnson-O'Malley parent advisory committees.

Consequently, the superintendent's recommendations and comments carried priority over that of the parent advisory committee to the local school boards. For instance, when we feel that there should be employment of Indian people who can better communicate with the Indian child, it should come under this program, but we are overruled by the fact that perhaps the non-Indian teacher's aid is more qualified than that of the Indian. We do have Indian teacher's aides in our school program. We have also noted that the programs designed under Johnson-O'Malley have somehow reached to a point of a coverup program to assist school districts for indirect maintenance and operation purposes of the school district.

I feel, and I am sure I speak for my area of Johnson-O'Malley parent advisory committees, that greater recognition should be made to local Johnson-O'Malley parent advisory committees because we feel that we know the needs and the problems from the grassroots.

The way the programs have been designed or implemented in some of the local school districts, the programs to some extent have not necessarily given adequate assurance in meeting the essential needs of the Indian child in his endeavor for a good education. Because of such administrative attitudes of the local schools toward Johnson-O'Malley parent advisory committees, and I would like to have the committee to consider very strongly the comment here, we need strengthening of local parent involvement, the strengthening of local parent involvement. And the recognition of authority of Johnson-O'Malley committees as a direct route toward the assurance of the implementation of programs designed under the objectives of the Johnson-O'Malley Act.

I cannot help but say that there are in existence today in the lesser Indian populated schools a feeling of discrimination, although it is not revealed publicly, but the feeling is there, and we in our case have experienced that, and I am sure that there are other schools, other school districts involved with Indian students who have undergone the same thing.

With that, Mr. Chairman, as I stated, I do not have a prepared statement. I am here under the authority of the tribal council and also as an individual speaking from the experience of being a member of the Johnson-O'Malley advisory board. I am relating this information or these comments to you, which I would respectfully ask that you take under consideration. Unless something is done to recognize Johnson-O'Malley parent advisory committees, we are nothing but a bobcat committee, or anyway, with our tails cut off.

Senator ABOUREZK. We use to have a saying in the law practice, it is something like a presumption in law. It is like a bat flying into the twilight. He soon disappears once he leaves your immediate eyesight.

We certainly thank you for that unprepared statement. I thought it was well put together for not having a long time of preparation and the ideas in it are excellent. We will certainly have them in the record and take them into consideration.

The hearings are adjourned until 9 o'clock Monday morning, June 4.

[Whereupon, at 3:30 p.m., the hearing was adjourned, to resume at 9 a.m., Monday, June 4, 1973.]

INDIAN SELF-DETERMINATION AND EDUCATION PROGRAM

MONDAY, JUNE 4, 1973

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS,
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk [presiding], Fannin, and Bartlett.

Also present: Jerry T. Verkler, staff director; Forest Gerard, professional staff members; Mary Gereau, consultant; Rick Lavis, legislative assistant to Senator Fannin, and Harrison Loesch, minority counsel.

Senator ABOUREZK. The hearings of the Indian Affairs Subcommittee are continuing this morning. The first witness is Mrs. Catharine Barrett, president of the National Education Association, Washington, D.C., and you are accompanied, Mrs. Barrett, by Mrs. Jean Flanagan, is that correct?

STATEMENT OF CATHARINE BARRETT, PRESIDENT OF THE NATIONAL EDUCATION ASSOCIATION; ACCOMPANIED BY JEAN FLANAGAN, ASSISTANT DIRECTOR OF RESEARCH

Mrs. BARRETT. That is correct, Senator.

Senator ABOUREZK. Very happy to see you this morning. Sorry I didn't step out and shake hands on the way in.

We are very happy to have you and we are pleased to have your testimony this morning, Mrs. Barrett.

Mrs. BARRETT. Thank you very much, Senator.

As you have indicated, I am Catharine Barrett, president of the National Education Association. We are always proud to be recognized as the largest professional association in the Nation.

Jean Flanagan, who is with me, is our assistant director of research and in her own right is an expert in school finance. I am pleased to submit this testimony in support of S. 1017.

The NEA as you know is an independent voluntary organization of educators. It presently has over 1,200,000 members employed in public schools and colleges and is the largest organization of public employees in the Nation.

With its 50 State affiliates and over 9,000 local affiliates, the NEA speaks for a combined membership of approximately 2 million public employees.

Attached to this statement is a copy of NEA Resolution 72–11, entitled American Indian Education. It is too lengthy to read, but we ask that it be made part of the record of this hearing.

Senator ABOUREZK. Without objection that will be the order.

[NEA Resolution 72–11 follows:]

EXCERPT, NATIONAL EDUCATION ASSOCIATION RESOLUTIONS, ADOPTED AT ANNUAL CONVENTION, JUNE 30, 1972

72–11 AMERICAN INDIAN EDUCATION

The National Educational Association recognizes that the complexity and diversity of needs of American Indian children require the direct involvement of Indian parents, Indian teachers, tribal leaders, and other Indian groups in developing adequate and equal educational programs which preserve the rich heritage of Indian culture.

The Association insists that federal funding for Indian education be expanded to effect necessary improvements. The Association supports the movement toward self-determination by Indians and insists that such programs be voluntary. The Association opposes termination of federal support for Indians either as a direct or indirect result of efforts to extend Indian self-determination.

The Association directs that programs be developed which provide for:

a. Involvement of Indian parents and communities with the public schools in developing programs for the improvement of education of Indian children.

b. Indian control of schools attended by Indian children and participation in the governance of schools attended by Indian students.

c. Ethnic studies in colleges of teacher education.

d. In-service education dealing with cultural pluralism, the teaching of American Indian heritage and culture.

e. Assistance to local and state associations in meeting the educational needs of Indian students.

f. Substanital participation by Indians in NEA conferences and leadership training programs.

g. Coordination with existing Indian organizations and concerned agencies.

h. Promotion of teaching as a career among Indian youth.

i. Higher education opportunities for all Indian students.

The Association recommends subsidization or free tuition for Indian students in state colleges and universities, extension of scholarships in graduate as well as undergraduate education, and Indian involvement in developing multi-cultural learning centers at higher education institutions.

Mrs. BARRETT. We have measured S. 1017 against the resolution and find no conflict in any respect. Thus, we wholeheartedly support S. 1017 and urge its enactment, as long as the majority of the Indian people have no opposition to it.

We note that S. 1017 permits the Secretary of the Interior to contract with Indian tribes, tribal organizations, and State or local school agencies for programs under title II.

While NEA policy traditionally supports channeling all education programs through the U.S. Office of Education to education agencies and local public school districts, we recognize that in the instance of Indian education the Indian people desire otherwise. We believe that their wishes in the matter should take precedence.

We also are impressed with the design in the bill to provide maximum Indian input and control, as far as permitted by State law, of programs authorized by this bill.

While it is not reasonable to expect that all problems will be solved by this practice, it is reasonablet o expectt hatt he Indian people can assist in designing programs to meet their needs better than have non-Indians in the past. It certainly is worth a try.

We do have some comments on part A of title II of S. 1017 which we hope will be useful to this committee. Part A is based on the premise that Indian children are entitled, by right of citizenship, to all of the services and support provided by State and other Federal law to non-Indian children. We believe that this is not only proper, but legally required as reiterated by the Citizenship Act of 1924.

Part A of title II establishes a formula under which Federal assistance would be provided to school districts on or near reservations or other tax-exempt Indian land. It requires the Secretary of Interior to be assured that local school districts which educate Indians levy taxes at the rate equal to the average levied by five size comparable school districts within the State.

In size as used here refers to numbers of pupils. This is not unreasonable. This effort will, of course, vary State by State because of the divergence in school financing policies and capabilities among the States. However, it is in keeping with the principle of nonintervention by the Federal Government in the fiscal policies of the States.

The formula also requires that school districts receive, for each Indian child, an amount of State aid equal to the average received by the five comparable districts.

Moreover, it directs that money received under title I of Public Law 81-874—and we urge that the language be clarified to show that it refers only to title I of that act—be counted, for purposes of this formula, as local tax revenue.

This, too, is reasonable. Ultimately, the difference between funds produced through these State and local revenues and the average per pupil cost in the five comparable districts will be made up by Federal funds provided by this bill.

At the request of the committee staff, our school finance specialists have tried to estimate what the overall cost of this portion of part A will be. Accuracy is impossible, as we do not have access to the necessary data from each affected school district regarding revenues generated by local property tax levies. However, these data could be compiled by the States without undue effort.

Incidentally, we note with appreciation that this bill does provide for funds to State departments of education, regardless of who the contractor may be, which will enable the State agencies to assist in implementing the act. This is very important, since there will be need for substantial statistical assistance from the States to implement this formula.

In order to provide some kind of guideline for the committee's consideration, we estimated that at an average expenditure of $450 per child—about half the national average—part A would require about $42 million for the first year.

This sum would provide funding for the formula in part A as well as the supplemental optional programs outlined in part A. It must be stressed that the $450 figure does not mean that each district or State would receive $450 for each child.

Depending on the State's system of finance, and the scope of optional programs requested, the amount per child will vary. However, we thought it would be helpful to the committee to propose a specific authorization figure, and we urge the committee to so inform the Appropriations Committee.

We suggest that language be inserted in the bill authorizing the Secretary to fund part A programs for Alaska at a rate 25 percent in excess of the average amount available to the other States. School costs in Alaska are on the average about 25 percent higher than the average for the other States.

We note that the definition of Indian in S. 1017 is more restrictive than that contained in title IV of Public Law 92–318, the Indian Education Act passed last year, after approval by the Interior Committee as well as the Labor and Public Welfare Committee.

We prefer the broader definition, but recognize the problem of committee jurisdiction which we understand limits this committee to programs for federally recognized Indians.

We are pleased that this bill does not repeal or negate title IV of Public Law 92–318. Thus, Indian school systems will be able to choose the program which is more suited to their specific needs.

One further point, while S. 1017 does not speak to the subject of federally operated Indian schools, we are concerned for the 62,000 children who attend such schools, including some 2,200 schools operated by local tribal school boards under contract with the Bureau of Indian Affairs. We support this practice and urge that it be broadened as circumstances permit.

However, we must point out that this trend will have a substantial effect on the teachers currently employed in BIA schools. As control of the schools moves to the tribes, we must anticipate that the tribes should and will have a more active voice in choosing teachers—without which they really don't have control.

Clearly, this will leave teachers, some with many years of experience and investment in civil service retirement programs, in a tenuous position. Therefore, we urge the committee to take an in-depth look at the Federal schools, the trend toward tribal control, and the effect this has on professional employees.

In summary, therefore, we support S. 1017, commend the sponsors of the bill and urge its speedy enactment.

Thank you very much.

Senator ABOUREZK. Thank you very much for an excellent statement, Mrs. Barrett. The committee staff member, Mr. Girard does have a question he would like to pose concerning one part of your testimony.

Mrs. BARRETT. Yes.

Mr. GERARD. Mrs. Barrett, in reference to the final paragraph on page 3 in which you suggest the 25-percent differential for Alaska, can you tell the committee if the same kind of differential is in operation for 874 funds that Alaska might receive, or for some of the funds they receive under the various titles of the Elementary and Secondary Education Act?

Mrs. BARRETT. I will ask Mrs. Flanagan.

Mrs. FLANAGAN. I do not believe it is.

Mr. GERARD. But you would recommend it in this instance?

Mrs. FLANAGAN. Yes.

Senator ABOUREZK. Obviously you are stating—that if there were no differential the result would be a shortage in that particular school district in Alaska.

Mrs. BARRETT. That is correct, unless they had the increased amount in which to operate. I had a rather interesting experience in costs in

Alaska when I was in Anchorage about 8 or 10 months ago and I went into the dining room for breakfast one morning. I noticed if you ordered separately on the menu one egg was $1.50 and that was a little bit different than in Washington and certainly different from that rural village of Syracuse in New York that I come from. So, I think I had a rather good lesson in increased costs in Alaska.

Senator ABOUREZK. There is only one perhaps benefit that might come from our inflation here, we might catch up with Alaska.

Mrs. BARRETT. We could use it.

Mr. GERARD. I have just two additional questions. First of all, do you feel that the formula we have proposed for part A title II of the bill would represent an equitable manner in which to distribute the funds if this legislation is enacted into law?

Mrs. BARRETT. Yes, sir.

Mr. GERARD. I note that you fail to make reference to some of the other authorizations proposed in title II. Do you wish to make any general comment as to their worthiness on Indian education?

Mrs. BARRETT. We really haven't gotten into that section and chose to address ourselves simply to the title I section, but we will by supplementary statement now otherwise address ourselves to that if you wish us to.

Mr. GERARD. If you would be willing to provide that for the record I believe it would be useful to the committee in its deliberation of the bill.

Mrs. BARRETT. I would be glad to do that.

[The information to be furnished follows:]

NATIONAL EDUCATION ASSOCIATION,
OFFICE OF THE PRESIDENT,
June 12, 1973.

Hon. JAMES G. ABOUREZK,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR ABOUREZK: I want to express NEA's appreciation for the opportunity we were given to formally register our support for S. 1017, "The Indian Self-Determination and Educational Reform Act." It was a pleasure to see you again and to testify before the Subcommittee on Indian Affairs on June 4.

As you may recall, I expressed NEA's support for the entire bill so long as it meets with the approval of the majority of the Indian people. In my testimony, I spoke mainly to Part A of Title II of the bill, indicating in general that NEA also favors the balance of the proposed legislation. During the hearing, I was asked to submit NEA's reactions to Parts B, C, D, E, F, and G, as well. This letter is intended to transmit NEA's comments for the record.

PART B. DEVELOPMENT OF PROFESSIONALS IN INDIAN EDUCATION

We feel that this authority, which specifically authorizes the Secretary of the Interior to make grants and contracts for the purpose of preparing persons to serve in public schools at all levels, is necessary. We suggest that the bill be amended to insure involvement of the Indian people in determining the content of programs funded under this Part. The suggestion made by other witnesses that the grants or contracts be with Indian tribes or tribal organizations, for subcontracting with institutions, is worth serious consideration.

PART C. SCHOOL CONSTRUCTION

We strongly support this provision and urge its enactment. PL 81–815 clearly does not even begin to meet the need. Since PL 81–815 gives preference—and properly so—to schools affected by disasters, the construction of schools on Indian reservations is further set back each year. The current backlog is estimated to be well over $1000 million. The need is great.

PART D. YOUTH INTERN PROGRAM

This is a particularly attractive feature of S. 1017. It will give young Indian students an opportunity not only to earn money for their education, but also to explore the various kinds of career opportunities that they too often believe are unattainable.

PART E. EDUCATIONAL RESEARCH AND DEVELOPMENT

We believe this is a necessary part of an Indian education package. We suggest that language be included designating preference to Indian institutions or organizations for contracts or grants.

PART F. ADULT, VOCATIONAL AND EARLY CHILDHOOD EDUCATION

This Part directs the Secretary of the Interior to bring to the 94th Congress recommendations for programs in adult, vocational, early childhood, special and higher education. Although the Department of the Interior may presently be authorized to make such recommendations, none have been made to date. Congressional mandate and special funding as proposed herein hopefully would lead to development of such recommendations.

PART G. GENERAL PROVISIONS

While all of these provisions are good, we are especially pleased with Sec. 220, which provides the opportunity for non-Indian children to participate in programs if parents of the affected children acquiesce. Properly, it precludes counting such non-Indian children under the funding section.

Personally, I am concerned about some other federal programs which are actually promoting racial and economic segregation within classrooms because of strict federal guidelines. We believe that providing non-Indian children the opportunity to learn more of the culture and customs of their Indian peers will be a major step towards solving the prejudices that exist in some communities.

In my testimony on Part A of S. 1017, I neglected to commend the sponsors for the provision in Sec. 204(b) which provides for advance funding. This is a most desirable feature which, if enacted, will give stability to the program as well as make possible efficient and economical use of the funds. We strongly urge that this feature be retained in the final draft of the bill.

I trust these comments will be useful to the Committee. If we can be of further assistance, please call on us.

Sincerely,

Mrs. CATHERINE BARRETT, *President.*

Senator ABOUREZK. Senator Fannin has arrived and perhaps would like to make a comment.

Senator FANNIN. Thank you, Mr. Chairman. I am sorry I missed your testimony.

Mrs. BARRETT. We understand you are a very busy person as are all the Senators.

Senator FANNIN. I woud like to have you, for the record, to evaluate the Public Law 815 program—as it affects public schools on or near Indian reservations.

Mrs. BARRETT. This is Mr. Flanagan who is with me.

Senator FANNIN. As it affects the schools of the Indian reservation?

Mrs. FLANAGAN. I think the problem there is that the amounts have not been spent that were appropriated and the amounts of the requests for appropriations have not reflected the need for construction on the reservations. I don't believe it is a title that has been used.

Senator FANNIN. That is correct.

Mrs. FLANAGAN. To improve Indian education.

Senator FANNIN. That has been our observation, but I wanted to have your opinion. Thank you very much.

Mrs. BARRETT. Thank you.

Senator ABOUREZK. Mrs. Barrett, thank you very much for your testimony.

Mrs. BARRETT. Our pleasure.

Senator ABOUREZK. The next panel of witnesses are the Northwest Affiliated Tribes, Mrs. Lorraine Misiaszek, acting director, Advocates for Indian Education of the Northwest Tribes; Mrs. Lucy Covington, Northwest Affiliated Tribes of the Colville Tribes. Are both of those witnesses here?

Mrs. MISIASZEK. Mrs. Covington is not here yet.

Senator ABOUREZK. Would you like to proceed with your testimony? I assume you are Mrs. Misiaszek.

STATEMENT OF LORRAINE F. MISIASZEK, ACTING DIRECTOR, ADVOCATES FOR INDIAN EDUCATION, THE NORTHWEST TRIBES, SPOKANE, WASH.

Mrs. MISIASZEK. Yes; first of all I would like to give you a little background on myself. I am a member of the Colville Confederated Tribes and I am acting director for the new educational corporation that was established by the Affiliated Tribes of Northwest Indians.

We call ourselves Advocates for Indian Education of the Northwest Tribes and our offices and our headquarters are located in Spokane, Wash.

Mr. Chairman, members of the committee, I would like to express my deep appreciation at having this opportunity to present comments and recommendations upon such a significant piece of legislation as the Indian Self-Determination and Educational Reform Act of 1973.

Senator Jackson, Senator Abourezk, and the committee are to be highly commended upon the thoughtful preparation and introduction of S. 1017. For many years Indian tribes have not had a clear-cut option to assume parts or portions of programs directly affecting them that is provided in this bill.

Authorizations of this nature offered in legislation proposed in the past have always been interpreted to mean that tribes must assume total responsibility for major programs that have held connotations of termination for them.

Subsequently, many tribal councils have not taken advantage of opportunities to undertake important activities that would allow a greater degree of self-determination.

In order to make this point clearly understood at the outset, section 109, title I of this bill which states: "Nothing in this title shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people," should be placed at the beginning of the title.

Of equal importance, the section authorizing planning grants does allow tribes the flexibility and choice to determine if, in the best interests of their tribal members, they want to undertake part of, all of, or none of the authority spelled out in sections 102 and 103 after the planning is completed. Inherent in the planning phase is an educative and transitional experience that will be of value regardless of the tribe's decision.

Part A, title II of the act concerns the Indian educational reform component. It is intended to replace the education section of what is

generally referred to as the Johnson-O'Mally Act and quite specifically outlines the authority and functions of the contractors.

Under section 203, however, the requirement that the contractors must have an approved education plan strongly implies that an Indian tribe as a contractor has a good working relationship with the school district and the State in order to comply easily with the requirement.

This is apt to pose difficulties for tribes desiring to contract with the Secretary for education funds because good relationships often do not exist between non-Indian educators, school administrators and Indians.

States having a significant population of Indians in their school systems have yet to acknowledge the fact that a high percentage of Indian students continue to experience serious academic difficulties which could be alleviated more rapidly if Indian tribes and Indian parents were allowed to participate actively in program decisions.

I would like to recommend that States, whether or not they were the major contractors, be required to demonstrate a satisfactory degree of cooperativeness with Indian tribes and parents within a specified period of time or lose the privilege of undertaking major contracts under this legislation in the future.

Under item No. 5, subsection G which reads,

Such other educational programs as may be mutually agreed to by the Secretary and the Contractor,

The definition of educational programs should be broadened to include student fees, equipment, supplies, and other materials when necessary to enhance the student's learning experiences and the students cannot afford to pay these costs themselves.

School officials frequently do not regard such items as falling within their definition of educational materials and resist Indian requests to include them in the school budgets. Travel and other minor expenses for Indian parents serving on school committees have been another matter of controversy with school officials. Such expenses should be included in the broadened definition under this subsection.

Subsection 6 relating to the salary rates of educational personnel serving Indians is a very positive measure. It would be much clearer if paraprofessionals were to be included in the definition of educational personnel.

At the present time, Indian paraprofessionals who serve educational programs in such vital capacities as resource people in Indian history, culture, and language projects, and so forth, receive pay at a fraction of the amount paid certificated staff.

Subsection 9, part b, concerns State educational agencies as contractors and requires that they form an advisory council including Indians representative of all tribes in that State.

It is very strongly recommended that rather than following the usual procedure of having an Indian person appointed by the State education officer, that the tribes each select their representative to the council.

Immediately following this section, the Secretary is authorized to contract with State education agencies regardless of who the contractor is, and to provide professional and support staff and administrative services to assist local school districts affected by the contracts.

It is the legal responsibility of State education departments to serve all citizens of the State equally, and to provide such stated professional services to all school districts.

There should therefore be no need to provide special funds for State offices to perform services that they should already have been providing to local education agencies.

In part C, school construction authorization meets one of the most critical needs experienced in Indian education today. It is important that State and local school districts be authorized construction funds and related land acquisition privileges.

Another very important area of concern should also be included under this section. Tribes who are becoming or have already established education agencies and schools should be given equal authorization to contract for construction funds and acquire land for educational sites whether the land be State, Government, or privately owned.

Such acquisitions by tribes should be allowed to be placed in the trust status category of the tribal lands.

Although this legislation addresses itself to the educational needs of Indian children in the public school systems, there is no other specific source of funds designated for construction of school facilities.

Public Law 815 has never been adequately funded, and as a result, schools with a small bonding capacity such as those on or near Indian reservations have been unable to secure finances to construct badly needed facilities.

Unless a separate piece of legislation were to be enacted to provide construction funds, tribal education agencies can only turn to this authorization for such funds.

Before I complete this statement, I would like to impress upon the committee how strongly Indian parents feel about any changes concerning Johnson-O'Malley programs. They have stated their belief that these programs requiring JOM parent committee signoff approval are the only ones they can remotely call their own in the sense that these programs reflect their wishes and concerns.

The sections of S. 1017 that I have not made any comments on are all very important and essential to the improvement of educational opportunities that this reform measure will facilitate for Indian tribes having a trust relationship with the Federal Government.

This concludes my statement in behalf of "Advocates for Indian Education: The Northwest Tribes."

Senator FANNIN. Thank you very much. I certainly agree with you that we have a very serious problem of providing Public Law 815 funds for school construction.

What percentage of your Indian students attend public schools?

Mrs. MISIASZEK. In the State of Washington, almost 100 percent. There are numerous Indian children that attend the Federal boarding schools from our State and I don't have those figures with me, but it is really quite a sizeable number—but it is in the upper grades and primarily at the secondary level.

There is one boarding school in the State of Washington that has 100 percent Indian enrollment, but that has up until 6 months or so been a private school.

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Senator FINNIN. What grades are involved in that?

Mrs. MISIASZEK. Grades 1 through 8. And another school that has almost 100 percent Indian enrollment which is a public school district, is on the Quinault Indian Reservation and that is Tahola and that is an elementary school, grades 1 through 8.

Senator FANNIN. Do the other students attend boarding schools in States near the State of Washington or are they quite some distance?

Mrs. MISIASZEK. Quite some distance, there are a number attending Treamah which is located more closely to the State of Washington. And many attend schools in New Mexico and the other places where they have Indian boarding schools.

Senator FANNIN. Do you have any idea of the percentage of the students that go through the eighth grade into high school? What percent of those have finished the eighth grade and continue on with their educational activities?

Mrs. MISIASZEK. I couldn't give you an exact percentage, it fluctuates, but I would say that the rate quite honestly is much higher among Indian students than among any other students.

Senator FANNIN. Do you feel that this is increasing?

Mrs. MISIASZEK. Yes, and on the other hand we have a greater number of Indian children enrolling in kindergarten and the first grade than we have had before, too.

Senator FANNIN. Do you have a preschool program now?

Mrs. MISIASZEK. We have not at every school district, however—you mean in kindergarten?

Senator FANNIN. Kindergarten or preschool program.

Mrs. MISIASZEK. Not in every case because there are many districts that cannot afford to undertake kindergarten and one of the major districts in the State of Washington does not have a kindergarten program; that is the city of Spokane school district.

Senator FANNIN. Aren't the Federal funds available for the preschool programs?

Mrs. MISIASZEK. Not kindergarten as such. The only kindergarten programs are that about 2 years ago when I directed Indian education in the State of Washington we began—we established the kindergartens in those schools on or near reservations for Indian children through Johnson O'Malley funds.

And after the school and the facilities were established and operating then the State could come in with State funds in those school districts and support a small percentage of the costs of operating these kindergarten programs. But up until that time there were no kindergartens in those districts because they could not afford them.

Senator FANNIN. In evaluating Public Law 815 funds to the school construction, how many schools have you built in the last say 5 years utilizing Public Law 815 funds, do you have any idea?

Mrs. MISIASZEK. I think in the State of Washington there has been none.

Senator FANNIN. No additions to schools under Public Law 815 funds?

Mrs. MISIASZEK. No; there may have been some portable classroom space acquired but I am not too certain if that was under Public Law 815 or under other special funds. And I am thinking now in terms of Cooley Dam with the building of a third powerhouse and the antici-

pated increased pupil enrollment. I am not certain, however, if their funds came from Public Law 815.

Senator FANNIN. Has the change in funding of Public Law 874 had an effect in Washington on funding the education of Indian students?

Mrs. MISIASZEK. I do know that there are a number of school districts that rely heavily upon Public Law 874 funds in the State of Washington to operate. And I would say that any cut in funds would drastically hurt these districts because these districts really have a very low bonding capacity and any time that a school district relies so heavily on impact aid funds they are going to be hurt. And, I don't know the amount of the percentage that the 874 funds have been cut back, I have not been with the State office for almost 2 years now so I really don't know. But, reality does dictate that any cut in Federal funds in these situations are going to hurt the program.

Senator FANNIN. Are your Indian students in category B?

Mrs. MISIASZEK. The Indian students are in category A primarily and there are a number of Indian students in category B, however, we are not fortunate enough to have all category A Indian students.

Senator FANNIN. Thank you very much.

Mr. GIRARD. Senator Fannin, Mrs. Misiaszek raised a very important point concerning the bill that I really believe should be brought on the record. It has to do with part A of title II.

She informs me that many of the tribal leaders in the Northwest have expressed concern to her that if the bill were enacted into law and we substituted a new statute for Johnson-O'Malley, their fear was that we might not be able to secure appropriations for the new statute and be able to expend it.

This morning I talked to Assistant Secretary John Kyle from the Department of the Interior on this matter and it was his position that since the administration had endorsed part A of title II, they would probably seek appropriations and whatever was made in the way of appropriations would expend them for purposes outlined in the bill.

If you have anything further to add to this I think it might help to allay any concerns that the Indian people have in this regard.

Senator FANNIN. Thank you very much. I am very hopeful that the administration will follow through in this regard.

Mrs. GEREAU. Mrs. Misiaszek, in your statement you said that since it was the responsibility of the State departments for education to serve all the citizens of the State equally, that you did not believe it was necessary to provide funds as the bill does.

Would you state through the department of education whether or not they are the contractors? Philosophically, I think we agree with you, it is a practical matter of thinking that some States don't do it and at the present time under the Johnson-O'Malley contracts the personnel in State departments of education that work with Indians are funded with Federal funds.

It was the purpose of the bill not to interpret that. If you were here when Mrs. Barrett testified, she pointed out there would be a great deal of statistical work which I don't think would be proper for the Indian tribes to try to do in a comparable district. And I think that was the purpose of putting such staff in the Department of Education to assist the school districts who have rather a complicated formula here.

It was not to be a supervisor to go out and set up the programs, it was just to provide the necessary professional staff assistance.

Mrs. MISIASZEK. But this was the point that I felt that must be made because I think far too often, I feel very strongly that our Indian children, whether it is in social welfare programs, educational programs, foster home care, these sorts of situations are, far too often our Indian children must pay their own way first. And the State will then come in.

I feel that this is unfair because they do not do this with other children in the same circumstances and I have long pressed for our Indian children to receive equal treatment in all services that Indians are, as taxpayers and citizens of a State, entitled to.

Mrs. GEREAU. I think the bill does speak to that point, in fact in two or three places and somebody pointed out it was a little repetitious. But it stresses the point over and over that before these programs that are anticipated in this bill can be in effect there must be an absolute guarantee that the Indian children are receiving equal treatment in all respects with all the other children. But this comes in on top of it.

But the point that I wanted to clarify for you was that we were not setting up an Indian supervisor by the term in the Departments of Education but rather guaranteeing that there would be the kind of staff available.

As you know, the administration has recommended the discontinuing of title V of ESEA which will wipe out about two-thirds of the staffs in some smaller States where the Indians live. Therefore, we were trying to guarantee that there would be that kind of technical professional assistance, not supervisory, but available for the school finance type thing that has to be done.

Mrs. MISIASZEK. I think that in this case then the language of the legislation should clearly state this because my understanding of it immediately was that here we are paying States to do something that they should have been doing always.

Mrs. GEREAU. That will be clarified I am sure, in the legislative history if the bill gets through the floor. That is the place for that to be clarified.

On page 3 of your testimony you made the suggestion that under item 5 of subsection G, "such other educational programs that may be mutually agreed upon or agreed to by the Secretary of the contractor," should be broadened. Now, are you suggesting that this is an amendment at that point?

Mrs. MISIASZEK. Yes; an addition to broaden the definition of education programs.

Mrs. GEREAU. So that it is clear, it would be the intent of the bill, for example, to pay for Indian children's gym suits and gym shoes or if there is a field trip on which these students are going, the Indian children's way would be paid here rather than depriving them of the trip because their parents didn't have the money?

Mrs. MISIASZEK. Yes.

Senator FANNIN. Thank you. Just one further statement. It is my opinion that the Federal Government has full responsibility for financing the education of those Indian children whose parents reside on reservation land. I think it goes beyond supplemental funds in my

opinion the Federal Government should take full responsibility. How do you feel on that?

Mrs. MISIASZEK. I believe they should also, and this should not preclude—however, say for the situation in our State where the State has full responsibility for education of all children in the State, regardless of whether they reside on or off reservations, I feel that this legislation enhances the opportunity to improve educational programs for those children that are directly with tribes—you know, with the trust relationship with the Federal Government. And I do believe that the Federal Government ought to recognize and ought to do everything in its power to continue to carry out their responsibility to the Indian tribes.

Senator FANNIN. Earlier you spoke of the taxes on the reservation lands, the property that is not taxable. That is why I feel that the Federal Government does have that extra responsibility toward the parents that reside on reservation land, would you agree with that? The problem here is that we have a county that normally would pick up the cost of the youngster's education and one or sometimes maybe two-thirds of the young people would be from Indian reservations and the one-third in that case that would be taxable would be forced to pick up the total cost. And I think it would be very unfair.

Mrs. MISIASZEK. They couldn't afford to.

Senator FANNIN. That is right. Thank you very much. Thank you kindly.

Unfortunately we have a witness that is delayed unavoidably who could not get here—in fact we have two witnesses that will not be able to attend. Mrs. Lucy Covington will be here later and Mr. Charles Trimble will be here around 11, so we will hear from them at that time.

The other witnesses that were supposed to appear—of course they were under the impression that they would follow these witnesses so they are not here now. So, we will stand in recess until 11 o'clock at which time we will hear the other witnesses.

[Recess.]

Senator FANNIN. The hearing will come to order. The next witness will be Mr. Charles Trimble, executive director of the National Congress of American Indians. Mr. Trimble?

STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. TRIMBLE. Good morning, sir. Thank you very much.

Mr. Chairman and members of the subcommittee, my name is Charles E. Trimble, executive director of the National Congress of American Indians.

On behalf of the National Congress of American Indians, I express appreciation for this opportunity to appear before you regarding this important legislation for Indian self-determination and educational reform.

Both Indian self-determination and educational opportunity and improvement for our children have been at the top of the list of priorities of Indian people for quite some time now.

Many of the aspects of S. 1017 we recognize as direct responses to Indian concerns expressed by Indian people over the years, particularly in education reform. We express our appreciation to this subcommittee for such responsiveness.

In its title I, S. 1017 seeks to promote the heretofore hollow promise of "Indian self-determination" through extensive provisions for contracting, by Indian tribes and tribal organizations, services provided by the Federal Government.

In addition, title I provides for grants to adequately plan the preparation to enter into such contracts; it provides for the detailing, at tribal request, of civil service personnel to assist tribes in the initial stages of the contracting; and, it seeks to, perhaps, loosen unwieldy contractual restrictions to enhance the transfer of the management to Indian people.

It is our understanding that title I of S. 1017 is essentially the same as S. 3157, the "Indian Self-Determination Act of 1972," passed by the Senate but not by the House of Representatives in the 92d Congress.

In testimony before this subcommittee last year, Mr. Franklin Ducheneaux, testifying on behalf of NCAI, supported the enactment of S. 3157.

In his testimony, however, Mr. Ducheneaux cautioned that in a 1971 case dealing with the Indian Bill of Rights provision of the Civil Rights Act of 1968, the District Court of New Mexico stated that the tribe, the defendant in the case, waived its sovereign immunity when it had contracted with the Bureau of Indian Affairs for operation of the law and order services on the reservation.

This consideration, Mr. Ducheneaux warned, may cause some tribes to refuse to avail themselves of the opportunities to contract services under the provisions of this legislation until this matter is cleared up.

Mr. Chairman, I recommend Mr. Ducheneaux's statement of last year for consideration by this subcommittee in its deliberations on S. 1017.

Aside from that consideration the National Congress of American Indians offers no amendment to title I and reiterates its support for this provision.

Title II embodies comprehensive changes which would result in greater tribal control over moneys and management of programs, previously disbursed and managed through Johnson-O'Malley Act authority in the Bureau of Indian Affairs, through direct contracting by the Secretary of the Interior to federally recognized tribes and tribal organizations. The NCAI supports such a concept.

However, NCAI joins the National Tribal Chairmen's Association and the all-Indian Pueblo Council in expressing serious apprehension to the requirements spelled out in section 203(a) of part A of title II.

Section 203(a) seeks to provide a formula which will assure that States meet their full financial support obligations to school districts eligible for contractual support from title II of this proposed act, thus resulting in equitable distribution of available funds provided herein.

However, many Indian people feel that such requirements as spelled out in the formula may prevent or discourage some school districts from participating in part A due to their inability, or unwillingness, to meet additional tax revenue requirements to bring them up to the five most comparable districts with non-Indian enrollment.

The National Congress of American Indians does share the feelings of serious apprehension over this aspect of the bill and respectfully requests further consultation on that matter. We offer our resources to put together such a consultation within the coming week if desired by this subcommittee.

You have heard in testimony by other witnesses support for the retention of Johnson-O'Malley provisions with amendments in language to provide for direct tribal and tribal organizational contracting.

This apparent loyalty to Johnson-O'Malley is somewhat tingled by caution and weariness. We have just gotten the feel of the Johnson-O'Malley Act to where we can somewhat control it despite its inadequacies. Appropriations for Johnson-O'Malley expenditures in the BIA budget are traditionally approved and we have come to plan on them year to year.

We are not adverse to change but you can understand our caution, for we have seen the appropriations for the widely praised Indian Education Act of 1972, enacted and appropriated last year, impounded for the greater part of the year and released just in time to be spent within the fiscal year.

We are concerned that this may be administration policy for all new programs and hence we feel that the recision of the education programs of the act of April 16, 1934, may prove to be premature as it is now scheduled in this bill.

Part A, section 203(a)(8) stipulated that in a district directly affected by any such contract described in the bill, where the local school board is not composed of a majority of Indians, an Indian community education committee shall be established "Which shall be so structured and carry out such duties as the secretary shall by regulation provide, subject to the laws of the affected State * * *

We feel that, in the spirit of Indian self-determination promoted by this proposed legislation, the powers of such a community education committee be considerable and these powers should be spelled out to provide for optimum voice for the Indian community. Among those powers should be the authority to approve or reject all proposed programs for contract under these provisions for that district.

The Indian Advisory Council on Education, which will be established for the purpose of instituting and approving programs on a statewide basis, should be specifically bolstered by additional funding to meet periodically to evaluate the programs of the State and to present such evaluations to a high level of administration.

The input of the Indian Advisory Council on education is particularly important in the provision of part B; the development of professionals in Indian education; and in part E, education research and development programs.

Too often Indians have been subjected to the programs devised through findings of professionals who are not fully aware of the needs and desires of Indian people.

As to part C, the National Congress of American Indians supports the contention of the National Tribal Chairmen's Association that increased consideration be given Federal schools operated by the BIA.

We support their proposal for a new title to this bill and support categorically their recommendations for such a new title.

NCAI commends the subcommittee for the considerations spelled out in parts D and F, but particularly for the youth intern program. The impending demise of the neighborhood youth corps causes great concern on the part of the Indian people and this can help fill that breach. And finally, Mr. Chairman, we recommend that a provision be added for funding to communicate the purposes and opportunities offered by this legislation, when enacted and appropriated, to the people for whom it was designed.

The American Indian Press Association, in its studies of communications among Indian people, has determined that Indian people do not have access to any media for information as the national non-Indian community does.

This lack of channels of communications results in misunderstanding and misinterpretation and Indian people often are not able to fully benefit from legislation and all legislation affecting Indian people on a large scale. We recommend provisions be made, along with adequate funding for the contracting of such provisions, for the necessary communications to the Indian people.

Mr. Chairman, much thought has gone into this bill. For the National Congress of American Indians, I commend this committee and the staff of this committee for its sensitivity and concern for Indian people.

Mr. Chairman, that concludes the statement of NCAI. But I would like to make one addition here.

Senator FANNIN. Please do so.

Mr. TRIMBLE. Mr. Chairman, we do notice language in the bill which specifically mentions preference being given to Indians. As a matter of fact, the entire bill is an Indian preference bill.

Beyond that the whole structure of Indian treaties and laws or Indian preference, I feel I must mention that this decision of the Federal Court in our book originally ruling Indian preference laws unconstitutional and in violation of the Civil Rights laws. This decision strikes directly at Indian employment preference laws which threatens the whole structure of Federal Indian relationships under the commerce clause of the Constitution.

This decision must be appealed and reversed. I note it for the committee's information as a matter of great Indian concerns.

Thank you very much.

Senator FANNIN. Thank you, Mr. Trimble.

Senator FANNIN. Do you feel, Mr. Trimble, that in this legislation the Federal Government may be moving away from the obligation that we have accepted over the years to fund Indian education? In other words, the State assuming this obligation?

It is my personal feeling that the Federal Government has a financial obligation, to the students and the families living on reservations, is that your feeling?

Mr. TRIMBLE. I think Indian people and Indian tribes need to be constantly cautious of such moves. We do believe that there could easily be a move toward administrative termination as well as legislative termination. And administrative termination could come about through such things as this.

But in this bill I believe that we haven't seen direct threats.

Senator FANNIN. Mr. Trimble, I am always concerned about the cost of a good educational program for Indian students. We have

public schools on the reservations; we have public schools adjacent to the reservations; and it is my feeling that the Federal Government has an obligation to support the students that attend those schools.

Mr. TRIMBLE. Mr. Chairman, I believe you are referring to section 203(a) which calls for that formula and calls for additional State funding to bring the schools up.

Senator FANNIN. Yes.

Mr. TRIMBLE. I believe that the National Congress of American Indians stands in line with the National Tribal Chairmen's Association and the All Indian Pueblo Council in being somewhat confused by that formula and the provisions made therein. That is the reason I asked for further consultation on the matter, if possible, with staff members.

Senator FANNIN. I trust that you will go into that matter very thoroughly because we could be in a position where the Indian students would not have adequate funds.

As you know, in some of the counties where they have a very large Indian population—where up to a third of the residents of the county are Indian citizens, then we place that burden on the properties that are taxable. That represented a very small part of the total.

It does create a problem and I think it could be a very serious one. We are all interested in having our Indian students have the very best educational program possible. But, I feel that the Federal Government should not be stepping out from under the obligation; they should be assuming a greater obligation. Is that your feeling?

Mr. TRIMBLE. We have a strong feeling that those schools the Indian students attend should be well up to par with all States and should in all cases have a per student cost equal to other schools in the State.

Now, how this is arrived at or should be arrived at, I think it cannot be by existing authority of the Johnson-O'Malley Act.

But we do feel strongly that provisions should be made to bring those schools up to par as well.

Senator FANNIN. Have you been concerned about the construction program as far as the Indian schools are concerned, I am referring, of course to the Public Law 815 program.

Mr. TRIMBLE. Yes, that would be part of bringing those schools up to par including facilities and curriculum matters.

Senator FANNIN. Thank you very much, Mr. Trimble. We appreciate your testimony.

Mr. TRIMBLE. Thank you.

Senator FANNIN. The next witness is Mr. Emmett Oliver, supervisor of Indian education, department of public instruction, Olympia, Wash. Mr. Oliver? Mr. Oliver, it is a pleasure to welcome you here this morning.

STATEMENT OF EMMETT S. OLIVER, SUPERVISOR OF INDIAN EDUCATION, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF WASHINGTON, OLYMPIA, WASH.

Mr. OLIVER. Thank you kindly, sir. I wonder if I may, with your permission, use my own tape recorder for recording my own comments. Is there any objection?

Senator FANNIN. No objections, you may go ahead and use your tape recorder. Do you have it available?

Mr. OLIVER. I do, sir, thank you.

Mr. Chairman, on behalf of Dr. Frank B. Brouilette, State superintendent of public instruction for the State of Washington, and the Indian children in all the schools of our State, I wish to express gratitude to our own Senator, the Honorable Henry M. Jackson, and the Honorable James Abourezk, chairman of this great committee and the rest of the subcommittee members for the privilege of appearing before this body and presenting testimony at this time on S. 1017 as they affect the education of Indian children in the State of Washington.

The purpose of my presentation today is to try my best to explain the operation of the Johnson-O'Malley program in the State of Washington, its effect on Indian children, and the need for expanding educational services and facilities for these children.

In the State of Washington, 42 public schools presently receive Johnson-O'Malley funds. The total Indian enrollment in the 42 schools is 5,900 out of a total student population in these schools of 44,260.

The location of these schools are shown on the third page of my written testimony, which I believe should be in the hands of members of the committee.

I am calling attention to the 42 Johnson-O'Malley schools in the State of Washington which are organized into 6 regional consortia.

If you would please turn to page 4 of the diagram, you will notice this structure. This map and diagram shows the name of the school district and the name of the Johnson-O'Malley Parent Advisory Committee chairman.

Each committee must have at least five committee members. This represents over 200 involved Indian parents, speaking for 6,000 Indian children.

In reference again to the chart, you will note that a statewide Johnson-O'Malley board is made up of two representatives from each of the six regional consortia.

The idea of the regional consortia of the Johnson-O'Malley committee arose from the needs expressed by Indian people themselves.

On August 25, 1971, small tribes and organizations of western Washington recommended to the State supervisor of Indian education that a State education advisory committee of Indian people should be formed. This had been repeated numerous times from various Indian groups and individuals.

In response to this recommendation a tentative organization plan was presented to local Johnson-O'Malley committees in six regions throughout the State.

These Johnson-O'Malley committees represent Indian communities at a grassroots level. It is appropriate that these organized groups selected by parents of Indian children should be involved in any statewide representation of Indian interests and education.

Again I call your attention to the accompanying chart illustrating the organization. The chart is arranged geographically with western Washington committees shown on the left side and eastern Washington committees shown on the right side.

I would call attention at this time to the map and chart if you are following, that region 4 embraces the Yakima Nation and seven public school districts in the Yakima Valley.

Subsequent to the adoption of this plan of regional consortia of committees, region 4———

Senator BARTLETT. Mr. Oliver, would you say where you are in your report?

Mr. OLIVER. I am diverting from the written report and giving some oral here which I have notes on and trying to describe for the committee. And in a moment I will explain what I feel is the significance of dwelling on Johnson-O'Malley programs as implement in the State of Washington.

Senator BARTLETT. Mr. Oliver, that will be fine. When you use the report, if you would refer to the page you use when you are doing it, we could follow you.

Mr. OLIVER. Yes, sir; thank you.

I am referring again to the diagram illustrating the composition of the consortia which is on page 4 of the written testimony. I am referring to region 4 in the Yakima Nation.

Senator BARTLETT. Mr. Oliver, when you turn pages, since they don't seem to be numbered, tell me which pages you count—do you count the first page?

Mr. OLIVER. Count the first page as one, the map is the third page. The formation of consortia of Johnson-O'Malley committees is page 4, page 5 is the chart.

Senator BARTLETT. Fine.

Mr. OLIVER. May I proceed, sir?

Senator BARTLETT. Yes, sir; please do.

Mr. OLIVER. What I am trying to do is just to refer to a part of the organization here in the region for the Yakima Valley which has seen fit to incorporate that region consortia.

Mr. Chairman, I feel that it is significant at this time to point this out because these are Indian parents who have seen fit in implementing the Johnson-O'Malley program at the local level and working with the public schools, to work together for their own self-interests in providing self-determination and input.

As far as their relationship and advisement to the local public schools serving those children, there are 1,700 Indian children represented by region 4, the Toppenish down to Goldendale.

This group is incorporated and is capable of receiving funds directly. I have through the State office in Olympia advanced some funds to this consortium for their own use. This group, also in a joint effort, proposed an application and has received funding in the amount of $38,000 to conduct research and write the culture and history of the Yakima Nation.

I move down to region 6 at the bottom of the page, Inchelium down to Curlew, reprsenting three communities on the Spokane Reservation, one on the Colville and another one on the Calaspell Cusick.

This group is also working together and have combined their efforts to conduct a rather extensive summer program for Indian children in that area.

Mr. Chairman, I am taking a great deal of time to explain the operation of the Johnson-O'Malley program in the State of Washington. In

addition to the written testimony which I have presented and which will be written into the record I should like to offer for public display at this time an advanced copy which is to be the parent "advisory committee operational manual."

It should be noted that much of the manual has been written by Indian people whose names appear in the title page.

Senator ABOUREZK. Are you offering that to the committee?

Mr. OLIVER. I am offering this to the committee, Mr. Chairman.

Senator ABOUREZK. It will be accepted and inserted in the file of the hearings.

Mr. OLIVER. Thank you, sir. I am sorry that I do not have additional copies. I will, however, speak to Mr. Girard and make available other copies as they become available and send them by mail.

Senator ABOUREZK. Thank you very much.

Mr. OLIVER. I think it is significant that I will explain this because what I am trying to describe is that we feel in the State of Washington that the Johnson-O'Malley committee—the Johnson-O'Malley program is just beginning to work.

Indian people have found a mechanism by which they can express their needs and goals and wishes and desires, as they perceive of what the public school should be doing for their children.

Recently in Yakima, Wash. I called together a body which we call the State Johnson-O'Malley Advisory Board. It consisted of 12 members, two elected from each of the regional consortia.

It was the purpose of this body to review, discuss and express opinion on the proposed legislation. Some of the comments and views I would like to pass on to the committee. In offering some general statements for the committee to consider and modifications of any Federal legislation or Federal programs that affect Indian children in the State of Washington we must accept the premise that there are no such people as the American Indian, rather there are Indians of America made up of numerous individual tribes and nations and bands among which there is a cultural variance as diverse with as many differences that exist between some groups of Indians and non-Indians.

The significance of what I am saying is directly related to the national legislation that may attempt to adopt blanket policy of educational measures programs that will suit all Indians.

A Navajo is an American Indian, but an American Indian is not a Navajo. Education for Navajos must be determined by Navajos for Navajos, and there is no assurance that such practices are suitable or applicable to the Indians of Washington State. In fact, we have different culture groups east of the mountains in Washington, the plateau people and the coastal tribes in the West.

Senator ABOUREZK. Mr. Oliver, I wonder if you are referring to this particular bill, S. 1017. I hope you understand that the bill is not presumed to have one standard of education for any one Indian or any group of Indian tribes or bands or different cultures. What it does is allow each Indian community so to speak to run their own educational needs and certainly they would do that as they saw the necessity for it. I hope you understand that.

Mr. OLIVER. I hope so, sir, and this is the reason that I am taking so much time making an emphatic point. The convention here is that

the Johnson-O'Malley program in the State of Washington is working. We are trying to improve it and we see needs to improve it, but we see in the State of Washington a program which we are comfortable with. There are some objections to it but I am pointing out here that I would take the position that we must be careful in national legislation that we don't destroy or restrict or prohibit the operation at the local grass roots level.

Senator ABOUREZK. I would tend to agree with you. I just want to assure you that it is not the intention of this committee or this Congress to disrupt or destroy with this legislation the Johnson-O'Malley program as it is working in the State of Washington because we understand that Washington is one of the very few places where you have tried to do something and tried to make this program work.

And I think that we ought to commend you for it at this time and just say that we are not going to affect that Johnson-O'Malley program at all with S. 1017.

Mr. OLIVER. Thank you, sir. I would like to proceed with more of my oral testimony.

Senator ABOUREZK. Please proceed. It is different than your written statement you have submitted.

Mr. OLIVER. Yes, sir.

Senator ABOUREZK. We will accept your written statement, by the way, into the record, and if you have a statement of how Johnson-O'Malley is working in your State and if you have then comments to make on S. 1017 itself orally, we would be pleased to hear that.

Mr. OLIVER. Yes, sir, thank you.

I would like to comment on section 202 which provides for Indian tribes and tribal organizations to contract with the Secretary of the Interior for educational programs for Indians enrolled in the public schools.

It is my understanding, Mr. Chairman, that such contracting must involve all tribes on a statewide basis. Is this true?

Senator ABOUREZK. Say that again now.

Mr. OLIVER. It is my understanding that such contracting between the Secretary and the Indian tribes must be done so on a statewide basis.

Senator ABOUREZK. No, the law does not require that. As it is written now—it gives the Secretary authority to contract, it is not mandatory that he contract with anybody but it gives him authority to contract with any State or political subdivision or with any Indian tribe or tribal organization on either a small basis or a wide basis depending on what they believe is best.

Mrs. GEREAU. I think I can clarify that. The point to which you were referring was that in some areas tribes cross State lines, therefore, this was saying, and the Navajo is a good example, that they would have a contract, the back part of that responsibility lay within the State of New Mexico and another contract for the part of their responsibility that lies say, in the State of Arizona. It was not to say that there would be only one contract with one tribe in one State. Because of the funding situation it varies from State to State, therefore, you couldn't make a contract with the Navajo that would apply across State lines. They have to recognize the taxing authority may vary between New Mexico and Arizona; that is what that part refers

to. It does not say that there would be only one tribe in a State with whom they could contract.

Does that clarify that part for you?

Mr. OLIVER. In other words, there could not be a situation where there would be only one tribe in the State that might contract, this is the question I am asking?

Mrs. GEREAU. We would say it does not require that. I don't think that the Secretary would enter into a thing with the Yakimas, for example, to provide education for the Colvilles if that is what you are fearing. This does not contemplate that that would happen or would not permit it.

Mr. OLIVER. But it is pretty much left up to the discretion of the tribe as similar to Johnson-O'Mal'ey?

Mrs. GEREAU. Right. In your State quite probably they would continue to make the contract with the State Department of Education just as you are doing now.

In some other States, South Dakota is a good example, where primarily it is the Sioux, and at the present time the Johnson-O'Malley contract is with the Sioux Tribe. But the part that you are referring to, I think, has led to some confusion because we were talking about the fact of the tribes and the Navajo are an example where they cross State lines and the reservation is not all in one State.

Mr. OLIVER. Thank you, I understand.

I might add this comment, Mr. Chairman, that this question was brought up with my State advisory board——

Senator ABOUREZK. It is a fair question. I think we can perhaps even clarify that more in the language of the bill, so I appreciate your suggestion on that.

Mr. OLIVER. Thank you.

From what she has expressed from the Johnson-O'Malley committees, they would like to see it continued to the State as in the present situation.

Again, I would like to refer to section 203 of the bill which provides for basic school support for eligible school districts. Such support is provided to the extent that combined local taxes and Public Law 874 provisions do not bring district revenues up to the average State and local level of the five most comparable school districts in the State which may be eligible for assistance under this bill.

I would like to point out, and I do not have figures to substantiate this, but I could certainly furnish them if it was felt—but education of Indian children in schools which have a rather high percentage of Indian children enrolled, the cost per child is fairly high, much higher than the average school district in the State of Washington.

I refer to such schools as Taholah where the average cost exceeds the State average, which is $800, to around $1,300 or $1,400 per child. And, if I am reading correctly for the financial implications under section 203, the formula here will make a substantial increase in funding for these kinds of schools; is this correct?

Senator ABOUREZK. That is correct; yes.

Mr. OLIVER. The board felt that they would certainly support the bill in this aspect and felt that this was a good feature. And as a matter of fact, they felt it was a better feature than 874.

And I hope the chairman of the committee will make a point of this because there is a great need in some of these districts.

Mrs. Gereau. Mr. Oliver, part of the thinking of the committee was that 874 is in such trouble that we wanted to have standby legislation that would guarantee that the Indian districts did get an adequate amount of money to achieve their educational opportunity, even if 874 funds are continued to be cut back or withheld, or rescinded, or whatever happens to them. We wanted to have this language available.

Mr. Oliver. I see. I should like to turn to another section of section 203, I believe, that provides for additional funds for special programs beyond basic support, such as guidance and counseling services.

There was a rather strong feeling here that this could be done through Johnson O'Malley with sufficient funds, with the increase in the Johnson O'Malley funding to enable the local committee to determine what kind of special services were needed and what kind of services they wanted and where the priorities were to be put.

And, in the case of limited funding I don't see anything in the bill that seems to indicate there will be unlimited funding.

Senator Abourezk. It wouldn't do us any good to put it in the bill anyway.

Mr. Oliver. I refer to another point in the bill which my board felt rather strongly about. Reference was made to a ratio of teacher aides and counsel aides and counselors to the number of Indian children being served. It was felt that this takes away the input of the local committee in determining as to the need of Indian children in their particular school.

And I might add for the record that in our 115 Johnson O'Malley teacher aides and counselor aides in the State, the function of these Indian people and the relationship to the number of children with whom they are working varies quite widely in respect to the felt need of how they can best serve Indian children.

Senator Abourezk. Mr. Oliver, do you think that it would be better to have in these particular positions a minimum, put in the word "minimum," so that at least we know there will be this many and perhaps more if the local school district wants more, would that be all right with you?

Mr. Oliver. Mr. Chairman, I have to continue to refer to the State of Washington and I want to restrict and limit my remarks to how I perceive the needs of education of children in the State of Washington. And I feel that this may be significant as to what we have done that has worked. We have tried to make things apply so widely that any reference to a minimum or maximum I would like to avoid because we have a chapter in the manual on the employment of aides in the public school and Indian parents have begun to understand and to employ how these paraprofessionals may be assigned.

Senator Abourezk. I just might point out that this is a flexible requirement, it is not mandatory. You will see at the bottom of page 12 of the bill and the top of page 13, it says:

> Additional funds provided under any contract pursuant to section 202 shall be utilized by the contractor so as to provide Indians enrolled in schools of any affected district with such programs as.

And then it continues with the counseling services and so on. So, it is not a mandatory requirement; it is requirements that can be utilized if they want to.

I would like to state, Mr. Oliver, that you are coming up with some very good suggestions. However, we do have one more witness that we would like to try to complete. It is 12 o'clock now and we would like to finish up with the last witness on this set of hearings before we break for lunch. So, I would appreciate it if you could try to compact your suggestions which have been very good and which are helpful to the committee in a shorter time than you had originally anticipated.

Mr. OLIVER. Thank you, I shall.

Section 203(a)(8) requires a community education committee where a majority of the school board is not Indian. In Johnson-O'Malley we require a community education committee at all levels and we feel that that should remain the same, we should not write in any special provisions.

There is a reference to a statewide Indian advisory council on Indian education where the State is the contractor and the council must be proportionately representative of all tribes, section 203(b).

Here again, I think if we are working, if we represent parents we ought to represent parents and let the parents decide as to how the representation should be affected.

In the State of Washington we have very large tribes, we have some very small tribes, and we feel that a representation as suggested by the people themselves would suffice.

I should like to make one reference to school building construction, and I believe that is part C, is that right?

Senator ABOUREZK. Yes.

Mr. OLIVER. In part C, which provides $30 million for school construction, there is certainly a need in a number of States; that I feel that this should be determined by the States and the regional offices because it varies widely.

There seems to be some apprehension and confusion as to why Public Law 815 hasn't been funded and why it hasn't been implemented effectively. There is some fear here that national legislation again may find itself in a dormant state due to impoundment of funds in a rather combersome way of getting money out for school construction.

There is on file in the State of Washington surveys made up to 4 and 5 years ago in reference to school building situation and needs that should be considered, and applicants are already on file. These applications haven't been responded to.

And it is not felt that new legislation is going to speed this up. What is needed is school building construction not legislation. And if we have a bill on the books, why can't we fund 815 and get these buildings in some state of operation?

Senator ABOUREZK. We have been asking the administration that for quite sometime and have been unable to get an answer, so we appreciate your adding your voice to that question.

Mr. OLIVER. I would grant any remaining time I have to any questions that may want to be directed to me.

Senator ABOUREZK. I have no questions. I will ask the staff members if they do, Mr. Oliver.

Thank you very much, Mr. Oliver. We appreciate your testimony and the suggestions and we will consider all of them and try to work out something on it.

[The prepared statement of Mr. Oliver follows:]

STATE OF WASHINGTON
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

June 1973

TESTIMONY ON S. 1017

INDIAN SELF-DETERMINATION

and

EDUCATIONAL REFORM ACT OF 1973

Prepared by

EMMETT S. OLIVER
Supervisor of Indian Education
State Superintendent of Public Instruction
State of Washington
Olympia, Washington

98-143 O - 73 -- 12

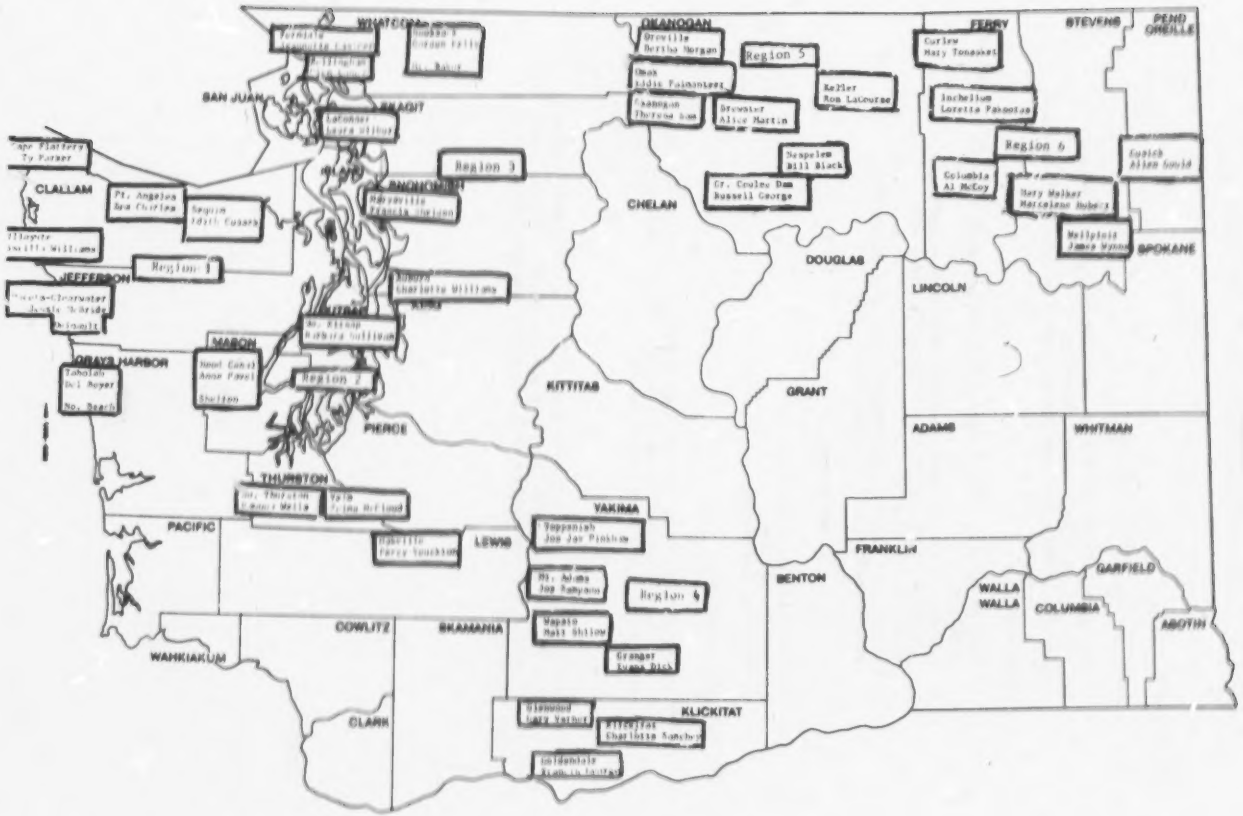
Mr. Chairman and Members of the Committee:

On behalf of Dr. Frank B. Brouillet, State Superintendent of Public Instruction for the State of Washington, and the Indian children in all the schools of our State, I wish to express gratitude to our own Senator, the Honorable Henry M. Jackson and the Honorable James Abourezk, Chairman of this great Committee and the rest of the sub-committee members for the privilege of appearing before this body and presenting testimony at this time on S. 1017 as they affect the education of Indian children in the State of Washington.

The purpose of my presentation today is to try my best to explain the operation of the Johnson-O'Malley Program in this State, its affect on Indian children, and the need for expanding educational services and facilities for these children.

In the State of Washington, forty-two public schools presently receive JOM funds. The total Indian enrollment in the 42 schools is 5,900 out of a total student population in these schools of 44,260. Locations of schools are shown on the below map.

The forty-two (42) JOM schools in the State of Washington are organized into six (6) regional Consortia. (Ref. enclosed map of State). The map shows the name of the school district and the name of the JOM PAC Chairman. Each committee must have at least five (5) committee members. This represents over 200 involved Indian parents - speaking for 6,000 Indian children. A statewide JOM Advisory Board is made up of two representatives from each of the six regional consortia. (see diagram on page)


WHATCOM
SAN JUAN
SKAGIT
CLALLAM
JEFFERSON
ISLAND
SNOHOMISH
Region 3
Region 1
Region 2
MASON
GRAYS HARBOR
PACIFIC
PIERCE
THURSTON
LEWIS
WAHKIAKUM
COWLITZ
SKAMANIA
CLARK
KITTITAS
YAKIMA
KLICKITAT
OKANOGAN
Region 5
CHELAN
DOUGLAS
GRANT
BENTON
FRANKLIN
Region 6
FERRY
STEVENS
PEND OREILLE
LINCOLN
SPOKANE
ADAMS
WHITMAN
WALLA WALLA
COLUMBIA
GARFIELD
ASOTIN

FORMATION OF CONSORTIUM OF JOHNSON-O'MALLEY COMMITTEES

I. Purpose

1. Basis for Statewide Committee

a. Assist Supervisor of Indian Education in decision making.
b. Organ to represent Indian viewpoint.
c. Express opinion to State Superintendent of Public Instruction.

2. Consortium may:

a. Pool resources - hire a consultant to serve more than one community.
b. Express collective need to local community college.
c. Conduct its own in-service training for aides and committee members.
d. Share joint projects in community goals of education, needs assessment, curriculum study, etc.

3. "Two heads are better than one"

a. Committee exchange ideas.
b. Self evaluation.
c. Practice monitoring.

II. Schedule of Meetings

Consortium meets monthly. Rotate host committee. Potluck or host dinner meeting. Prepare program for others to see. Show off what has been working. Engage resource person.

III. Expenses

Chairman or representative travel paid out of local budget. Research underway for devising means to obtain advance travel. May be legal. Two consortium representatives (big 12) travel and per diem borne by the State office.

JOHNSON-O'MALLEY

ADVISORY BOARD PROPOSAL

JOM educational activities, in addition to the 42 schools, involve the Migrant and Indian Education Center at Toppenish, Olympic Community College in Bremerton, and the Summer High School Program involving Indian children from Wapato, Toppenish, Granger and White Swan, and the Indian Summer high school at Fort Warden near Port Townsend. Data from these programs are not included with public school findings, but it is recommended that these programs be considered an integral part of Washington's JOM program.

The Johnson-O'Malley Act, as ammended, authorizes the Secretary of Interior to contract with State Superintendents of Education in those States having a sizeable Indian population that is served by the public school system. The State of Washington has administered a Johnson-O'Malley program under contract since 1934. At that time, the State assumed full responsibility for the education of all children in the public schools, and the schools operated by the Bureau of Indian Affairs for Indian children were closed.

Johnson-O'Malley funds had first been used exclusively for bus transportation and school lunch costs. Since the passage of P.L. 874 (Federal impact legislation) and the National School Lunch Act, JOM funds have been used for special program activities designed to improve the educational opportunities for Indian children.

Special programs that are currently underway in a number of school districts include the following types of activities:

1. Home-school liaison (personnel are employed from the Indian community).
2. Teacher or counselor aides.
3. Remedial and/or basic skills improvement
4. Expansion of curricular offerings.
5. Curriculum development (emphasis on Indian history and culture).

6. Inservice training and staff orientation workshops.
7. Study hall and special tutoring efforts.
8. Provision for payment of student fees and supplies when necessary.

Program emphasis may be illustrated by the following table showing amounts distributed to activities during the academic year 1971-72.

PROGRAM EMPHASIS	Amount	Percent
Academic Achievement	$172,853	24%
Cultural and Vocational Awareness	104,135	14%
Indian Involvement in Education (teachers, aides, counselors)	91,783	12½%
Early Childhood Education	77,617	10½%
In-Service and Continuing Education	7,206	1%
Counseling, Attendance Services	238,402	32½%
Supplementary Student Support	40,684	5½%
Total Approvals	$732,680	100%

CRITERIA REGULATING THE JOHNSON-O'MALLEY PROGRAM

Factors that help determine eligibility of a school district to receive Johnson-O'Malley funds:

1. The school must be located on or near Indian Trust Land.
2. School enrollment shows a significant ratio of Indian children in attendance.
3. Evidence of need. There must be some indication that the school program is not adequately meeting the educational needs of its Indian pupils.

   Examples: High drop-out ratios, underachievement in the academic courses, or non-participation in school activities, etc.
4. The school district must show a need for supplemental funds from the Johnson-O'Malley program after considering all available revenue from local, State and federal sources.
5. A committee of Indian parents is required to be formed before application is made for a JOM funded program. The committee collaborates with school district officials to identify educational needs and to develop the proposal for approval.

   *Eligible Indian children means those that have ½ or higher degree of Indian blood residing on or near trust land.

RESTRICTIONS FOR USE OF JOHNSON-O'MALLEY FUNDS

1. JOM funds may not be used for schools lunches after 1971-72. the free or reduced price lunch program is available to all needy children. Indian children should not be excluded from the benefits of these programs.
2. JOM funds may not be used for general school operation costs.
3. JOM funds must not supplant or duplicate program efforts that can be supported through other available revenue sources of the school district.
4. JOM program grants are not based upon a per pupil ratio, but rather on the merits and needs of special programs that identify with the Indian enrollment.

PROGRAM ACCOUNTABILITY

School districts having approved programs must submit a report of the Indian enrollment breakdown by age and grade no later than October 1 of each year. A special JOM form, 621AM3, rev. 2/27/68, is provided by the State Office for this purpose.

If there is a need to revise or modify activities that are a part of an approved program during the year, the changes must be reported by letter to the State Office.

In the event that additional funds are required to carry out an approved program, an application must be submitted for approval. See attached application form shown below. Approval will be based upon availability of JOM funds.

For audit purposes, it is necessary that each school district maintain accurate financial records that reflect an expenditure of JOM funds for the purposes listed in the program application. Records are kept for a period of ten years. Accountability of funds are insured by the use of three forms, F-125, F-126 and F-147. Attention is called to Column F on the application where Object Code numbers coincide with object code numbers of F-125. Claims can only be made against the final budget shown on the F-125 as matched by what the JOM PAC authorized. School districts may not receive monies other than those which are approved by the Committee. School districts cannot overspend their JOM budget since payments made by submitting the F-147 are always checked against the F-125. The foregoing fiscal procedures make it virtually impossible to allow for misuse of JOM funds as approved by the Committee.

SUPERINTENDENT OF PUBLIC INSTRUCTION
OLYMPIA, WASHINGTON

APPLICATION FOR FINANCIAL ASSISTANCE FROM INDIAN EDUCATION FUND (JOM): FY 19___ - ___

SCHOOL DISTRICT _____ COUNTY _____

ADDRESS _____

TELEPHONE NUMBER _____ PROJECT DIRECTOR _____

Total JOM Request for 19___- ___ $_____

Amount Approved by State Agency _____

By: _____ Date _____
Supervisor of Indian Education

AFFIDAVIT: This application has been developed and approved for the Indian students in this School District by the Johnson-O'Malley Parent Advisory Committee and the School District officials, and will be carried out as described herein.

(signed) _____ (signed) _____
SUPERINTENDENT OF SCHOOLS CHAIRMAN, JOM COMMITTEE

Date: _____ Date: _____

I. Estimated Enrollment for Program Application Year 19___ - ___
(Circle appropriate grades in each level.)

	Dist. Total	Eligible Indians*
a. Kindergarten Age 5		
b. Elementary School Level 1 2 3 4 5 6		
c. Middle School or Junior High Level 4 5 6 7 8 9		
d. High School Level 9 10 11 12		
e. Special Education (Ungraded)		
Total Enrollment		

*Eligible Indian children are those meeting the Code of Federal Regulations.

II. General Information

a. JOM Committee Names

	Parents of *Eligible Indian Children	
	Yes	No
Secretary: _____		
Address: _____		

b. JOM Program Staff Names:

	Indian	
	Yes	No

c. If funds from sources other than JOM are used in program, please provide the following information:

1. Amount $_____
2. Source _____
3. How used _____

III. Program Application
(Use foldout pages following)

TO BE DEVELOPED IN COOPERATION WITH SCHOOL STAFF

	A	B	C	D		
	INDIAN COMMUNITY GOALS (PRIORITIZED)	EDUCATIONAL GOALS (PRIORITIZED)	EDUCATIONAL NEEDS (PRIORITIZED)	OBJECTIVES (MEASURABLE)	No. of Students Served	Grade Level
1						
2						
3						
4						
5						

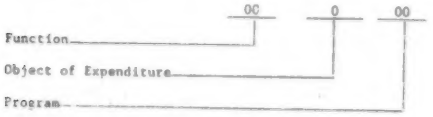
TO BE DEVELOPED IN COOPERATION WITH SCHOOL STAFF

E	Staff		F			G	H
PROJECT COMPONENT (DESCRIPTION OF ACTIVITIES)	Cert.	Non-Cert.	Object Code	COMPONENT COST (BUDGET) Budget Categories	Preliminary Estimate	Final Approval	EVALUATION PROCEDURES	EVALUATION RESULTS
			1	Certificated Salaries	$	$		
			2,3	Non-Certificated Salaries				
			4	Employee Benefits				
			5	Supplies and Materials				
			6	Books				
			7	Contractual Services				
			8	Travel				
			9	Capital Outlay				
				Component Totals	$	$		
			1	Certificated Salaries	$	$		
			2,3	Non-Certificated Salaries				
			4	Employee Benefits				
			5	Supplies and Materials				
			6	Books				
			7	Contractual Services				
			8	Travel				
			9	Capital Outlay				
				Component Totals	$	$		
			1	Certificated Salaries	$	$		
			2,3	Non-Certificated Salaries				
			4	Employee Benefits				
			5	Supplies and Materials				
			6	Books				
			7	Contractual Services				
			8	Travel				
			9	Capital Outlay				
				Component Totals	$	$		
			1	Certificated Salaries	$	$		
			2,3	Non-Certificated Salaries				
			4	Employee Benefits				
			5	Supplies and Materials				
			6	Books				
			7	Contractual Services				
			8	Travel				
			9	Capital Outlay				
				Component Totals	$	$		
			1	Certificated Salaries	$	$		
			2,3	Non-Certificated Salaries				
			4	Employee Benefits				
			5	Supplies and Materials				
			6	Books				
			7	Contractual Services				
			8	Travel				
			9	Capital Outlay				
				Component Totals				
PROJECT TOTALS				PROJECT TOTALS	$	$		

GENERAL FUND EXPENDITURES

Under this uniform system of school expenditure classification, expenditures are classified by function, sub-function (or activity), object of expenditure, and program. This classification system will permit the identification of expenditures by specific accountable state and federal projects, and facilitate the preparation of reports and administering budgets along standard functional lines.

General Fund expenditures are classified using a five position code as follows:



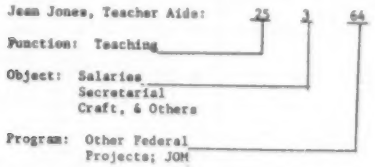
This code, while referred to as a five position or digit code, can be expanded by adding positions to one or more of the three fields. For example, if a school district wishes a more detailed analysis of the object of expenditure, the object field can be expanded to as many positions as desired. Any expansion of a field, or block of numbers, must, of course, be uniform in order to retain the identity of the three fields. For example of expenditure code expansion, see page III - 65, Optional Program Coding.

Note to JOM Committee members:

This and the attached pages are reproduced from the Accounting Manual For Public School Districts in the State of Washington, issued by the Superintendent of Public Instruction and the State Auditor.

Committee members who need more complete information on school district accounting methods may request a copy of the Manual from the Superintendent of Public Instruction.

The five digit code system illustrated above is basic to the school district accounting system. These codes will appear in column (6) of Form F-147, and when properly understood, will identify the purpose of each expenditure item documented. A typical entry on the F-147 could be as follows:



See the following pages for keys to the Expenditure Accounts. The format on these pages is used on the budget. The objects of expenditures are shown in the vertical columns, and the key for these is at the bottom of the third page. The program codes are shown on the last page

GENERAL FUND
CLASSIFICATION OF EXPENDITURE ACCOUNTS

nction / Sub-Function	OBJECTS OF EXPENDITURE								
	1	2	3	4	5	6	7	8	9
) Administration									
11 Board of Directors	XXXX	XXXX	XXXX	XXXX		XXXX			
12 Superintendent's Office						XXXX			
13 Business Office						XXXX			
0 Instruction									
21 Administration of Instruction						XXXX			
22 Instructional Aids (A-V)						XXXX			
23 Educational TV						XXXX			
24 Principals						XXXX			
25 Teaching						XXXX			
26 Textbooks	XXXX	XXXX						XXXX	
27 Library									
28 Counseling						XXXX			
29 Extra Curricular		XXXX	XXXX		XXXX	XXXX	XXXX	XXXX	XXXX
0 Pupil Services									
31 Supervision						XXXX			
32 Attendance Services						XXXX			
33 Guidance (Social) Services						XXXX			
34 Psychological Services						XXXX			
35 Health Services						XXXX			
36 Group Testing						XXXX			
0 Food Services									
41 Supervision	XXXX					XXXX			
42 Food	XXXX	XXXX	XXXX	XXXX		XXXX		XXXX	XXXX
44 Operations	XXXX	XXXX				XXXX			
0 Pupil Transportation									
51 Supervision	XXXX					XXXX			
52 Operation of Buses	XXXX	XXXX				XXXX		XXXX	XXXX
53 Maintenance of Buses	XXXX	XXXX				XXXX		XXXX	XXXX
54 Garage - Operation & Maint.	XXXX	XXXX				XXXX		XXXX	
55 Payments In-Lieu-of Transp.	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
56 Insurance	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
57 Replacement & Rebldg. of Buses	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	
58 Additional Buses	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	

60 Operation of Plant									
61 Supervision	XXXX					XXXX			
62 Groundskeeping	XXXX	XXXX				XXXX			
63 Custodial	XXXX	XXXX				XXXX			
64 Heating	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
65 Utilities	XXXX	XXXX			XXXX	XXXX			XXXX
66 Rentals	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
67 Insurance	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
68 Warehousing & Distribution	XXXX					XXXX			
70 Maintenance of Plant									
71 Supervision	XXXX					XXXX			
72 Maintenance of Grounds	XXXX	XXXX				XXXX			
73 Maintenance of Building	XXXX	XXXX				XXXX			
74 Maintenance & Repair of Equip.	XXXX	XXXX				XXXX			
80 Community Services						XXXX			
90 Payments to Other Districts									
91 Data Processing	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
92 Handicapped	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
93 Educational T.V.	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
94 Cooperative Educ. Services	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
95 Transportation	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
96 Other	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
97 Interest Expense									
98 Warrant Interest	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX
99 Other Interest	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX		XXXX	XXXX

TITLES - OBJECTS OF EXPENDITURE •

1. Salaries - Certificated
2. Salaries - Professional & Technical
3. Salaries - Secretarial, Craft & Other
4. Employee Benefits
5. Supplies & Materials
6. Books
7. Contractual Services
8. Travel
9. Capital Outlay

III - 54

GENERAL FUND EXPENDITURE CLASSIFICATION

PROGRAM CODE
(Fourth and Fifth Positions of Expenditure Code)

Program Code

00 - Undistributed (Indirect Cost, Prorated Periodically)
05 - Summer School Program
10 - Elementary Program
20 - Secondary Program
28 - Vocational Education - Secondary
29 - Traffic Safety
30 - Handicapped Program
39 - State Institutions

Federal Projects - PL 89-10
- 41 - Title I Projects
- 45 - Title II Projects
- 47 - Title III Projects
- 49 - Title IV Projects

Federal Projects - Cultural
- 50 - Head Start (Ec. Op. Act)
- 53 - Neighborhood Youth Corps (Ec. Op. Act)
- 57 - Adult Basic Education

Federal Projects - Other
- 60 - Manpower Development and Training Act
- 62 - PL 864 - NDEA Title III
- 64 - Other Federal Projects

Non-Federal Special Accountable Projects
- 70 - Projects Funded by State
- 75 - Projects Funded by Foundations and Other Non-governmental Sources

Adult and Vocational-Technical
- 81 - Adult Education
- 85 - Vocational - Technical Schools
- 90 - Community Services

SUBMIT IN TRIPLICATE **Sample**

State of Washington
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

Form F-147 (2/7)

LOCAL PROJECT RECORD

SCHOOL DISTRICT NAME _____ SUBMITTED BY _____ DATE _____

REPORT FOR QUARTER ENDING _____ 19__ LEA PROJECT NUMBER _____ AMOUNT APPROVED FOR PROJECT $ 10,000

(1) ITEM OR VENDOR	(2) DOCUMENT NUMBER	(3) DATE	(4) CASH RECEIVED	(5) WARRANT NUMBER	(6) EXPENDITURE CODE	(7) AMOUNT OF OBLIGATION	(8) PAID	(9) UNOBLIGATED BALANCE
BALANCES FORWARD FROM PREVIOUS QUARTER OR PAGE								
								10,000.0
Jean Jones	Oct. Payroll	10/31/72	—	482	25-3-64	380.00	380.00	9,620.0
State Dept. L. + I	Voucher #120	"	—	483	25-4-64	18.00	18.00	9,602.0
Tandy Leather Co.	Voucher #121	"	—	484	25-5-64	50.00	50.00	9,552.0
TOTALS FOR QUARTER OR FORWARD TO NEXT PAGE							448.00	9,552.0
GRAND TOTAL TO DATE								

Page of Pages

98-143 O-72--13

Form F-125 (4/71)

State of Washington
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

BUDGET SUMMARY

PROJECT BUDGET
SUMMARY FOR _____
(Federal Title Designation)

Budget Period:

_____
Name of Agency

Beginning _____, 19__

_____
Address of Agency

Ending _____, 19__

		SALARIES		Employee Benefits	Supplies & Materials	Books	Contracted Services	Travel	Capital Outlay	TOTAL EXPENDITURES
		Certificated Obj.1	Non-Certificated Obj.2&3	Obj.4	Obj.5	Obj.6	Obj.7	Obj.8	Obj.9	
[1]	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	[11]
ADMINISTRATION	100									
INSTRUCTION	200									
ATTENDANCE PUPIL SERVICES	300									
FOOD SERVICES	400				*					
PUPIL TRANSPORT. SERVICES	500		*	*	*					
OPERATION OF PLANT	600		*	*	*					
MAINTENANCE OF PLANT	700									
								INDIRECT COST		
SUB-TOTAL										

REMODELING AND FACILITIES ACQUISITION				
Building Fund Expenditure Category				
Project Number	Expenditure Type	Object		
	3		Buildings - New (Including Portables)	
	4		Buildings - Remodeling	
	5		Equipping Buildings	
			SUB-TOTAL	
			TOTAL PROJECT BUDGET (Sum of all Components)	

* Only under special circumstances.

Form F-125-I (4/72)

State of Washington
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

EXPENDITURE DETAILS OF PROJECT BUDGET

Expenditure codes should be derived from or consistent with FUNCTION & OBJECTS per Accounting Manual for Public Schools of the State of Washington. Details herein are to be summarized and entered on Form F-125 - BUDGET SUMMARY.

The codes that occur most commonly are prelisted hereing space is provided for inserting position title or designation of type of personal service for unusual situations.

Part I - Salaries and Wages Classification of Assignments	Account Code	Number of Employees				Total Salary	Employee Benefits
		Regular		Summer			
		Total	FTE	Total	FTE		
ADMINISTRATION:							
Comparability Report	13-2						
INSTRUCTION:							
Director & Management	21-1						
Supervisor	21-1						
Clerical	21-3						
Teachers:							
a.	25-1						
b.	25-1						
c.	25-1						
d.							
Released Time	25-1						
Substitute Teachers	25-1						
Teacher Aides	25-3						
Librarian	27-1						
Librarian Aides	27-3						
Counseling	28-1						
PUPIL SERVICES:							
Attendance	32-3						
Guidance	33-1						
Psychologist	34-1						
Health Services	35-2						
FOOD SERVICES - Lunchroom	44-3						
PUPIL TRANSPORTATION - Drivers	52-3						
OPERATION - Custodial	63-3						
MAINTENANCE: - Buildings	73-3						
Repair	74-3						
					TOTALS		

Form F-125-I (4/72) (continued)

Part II - Non-Salary Expenditures	Account Code	AMOUNT
OBJECT 5 - SUPPLIES & MATERIALS*		
Audio-Visual Supplies & Materials	22-5	
Instructional Supplies & Materials	25-5	
TOTAL		
OBJECT 6 - BOOKS		
Text Books & Work Books	26-6	
Library Books	27-6	
TOTAL		
OBJECT 7 - CONTRACTUAL SERVICES		
Education Consultants:		
Project Design ____ days @ $ ____ per day	21-7	
Evaluation & Monitoring ____ days @ $ ____ per day	21-7	
Inservice Education ____ days @ $ ____ per day	25-7	
Other ____ days @ $ ____ per day		
Maintenance & Repair of Equipment	20-7	
Medical Services	35-7	
Utilities & Fuel	60-7	
Telephone	65-7	
Rental:		
Film Rental	22-7	
Instructional Equipment	25-7	
Building or Space	66-7	
Parent Advisory Committee	21-7	
Miscellaneous		
TOTAL		
OBJECT 8 - TRAVEL		
Director	21-8	
Staff & Inservice Workshops	25-8	
Consultants	25-8	
Attendance (Specify)	32-8	
TOTAL		
OBJECT 9 - CAPITAL OUTLAY		
Equipment (Itemize below):		
TOTAL		

* List in generalized categories such as, A-V Materials (22-5), Food (42-5), Gasoline (52-5), Instructional Materials (25-5), etc.

STATE OF WASHINGTON — INVOICE VOUCHER

Form F-146 (3/71)

CLAIM AND REPORT FOR FEDERAL TITLE _____ SUBMIT IN TRIPLICATE

AGENCY	CERTIFICATE
SUPERINTENDENT OF PUBLIC INSTRUCTION Old Capitol Building Olympia, Washington 98504	I, the undersigned, hereby certify that the amount listed for materials furnished, services rendered, expenses incurred or other items of indebtedness as charged in the attached claim is a true and correct charge against the State of Washington; that the claim is just and due; and that I am authorized to sign for the payee.
School Dist. _____ Street _____ City _____ County _____	Name _____ Title _____ Date _____

1. LOCAL PROJECT NUMBER	2. PROJECT YEAR	3. AMOUNT APPROVED	4. 75% LIMITATION

5. DISBURSEMENTS FOR QUARTER ENDING _____

6. Total Federal Cash Received to Date This Project		
7. Disbursements Previously Reported		
8. Disbursements in Quarter Just Ended		
9. Total Disbursed to Date (Item 7 + Item 8)		
10. Federal Cash Balance (Item 6 Minus Item 9)		
11. Estimated Cash Needs Month of _____		
12. Cash Required (Item 11 Minus Item 10)		
13. Estimated Cash Needs Month of _____		
14. Estimated Cash Needs Month of _____		
15. Total Cash Requested (Items 12 + 13 + 14)		

REMARKS:

☐ Check if Project is Completed.

STATE OFFICE USE ONLY

FUND	CITY P.	PROG.	SUB.	OBJECT	SUB.		PROJECT	AMOUNT	
									Checked _____
									Posted _____

APPROVED FOR PAYMENT	DATE	AMOUNT	VOUCHER NO.	WARRANT NO.
By _____, Fiscal Officer				

FORM F 147 (2/72)

State of Washington
SUPERINTENDENT OF PUBLIC INSTRUCTION
Olympia

SUBMIT IN TRIPLICATE

LOCAL PROJECT RECORD

SCHOOL DISTRICT NAME _____ SUBMITTED BY _____ DATE _____

REPORT FOR QUARTER ENDING _____ 19__ | LEA PROJECT NUMBER _____ | AMOUNT APPROVED FOR PROJECT $ _____

(1) ITEM OR VENDOR	(2) * DOCUMENT NUMBER	(3) DATE	(4) CASH RECEIVED	(5) WARRANT NUMBER	(6) EXPENDITURE CODE	(7) AMOUNT OF OBLIGATION	(8) PAID	(9) UNOBLIGATED BALANCE
BALANCES FORWARD FROM PREVIOUS QUARTER OR PAGE								
TOTALS FOR QUARTER OR FORWARD TO NEXT PAGE						GRAND TOTAL TO DATE		

* Such as Purchase Order, Memo Charge, Requisition or Payroll

Page ___ of ___ Pages

A look back over the past five (5) years shows how the Johnson-O'Malley program has grown in this state:

Fy 1968-69	28 schools	annual budget...$165,621
FY 1969-70	30 schools	annual budget... 247,519
FY 1970-71	35 schools	annual budget... 703,274
FY 1971-72	36 schools	annual budget... 732,680
FY 1972-73	42 schools	annual budget... 950,000

A number of school districts have Indian children enrolled but do not qualify for JOM assistance under the present regulations of the Act. The total number of school districts in the State of Washington having at least ten (10) Indian students or 50 percent of enrollment NOT being served by JOM is 110. As cited above, the number of Indian students presently being served is roughly 6,000. There are over 13,000 Indian students in Washington who would be served by the ten or fifty percent guidelines. Some large districts have significant numbers of Indians enrolled but do not qualify under the present definition of eligibility (Trust land) of the JOM Act. An example of some NON-JOM urban school districts having significant numbers of Indians enrolled are:

Seattle 860
Tacoma. 605

Seattle Public Schools has questioned the eligibility criteria of JOM pointing out that they have more Indians enrolled than any other public school system in the state.

AVERAGE DAILY ATTENDANCE

A recent study of 23 schools served by JOM showed a comparison of average daily attendance with non-Indian children.

Indian student attendance varied from 85.0% to 100% (average 91.6%). Non-Indian attendance varied from 88.8% to 97% (average 93.6%). Generally average daily attendance has increased in schools served by JOM. Omak High School on the Colville Indian Reservation reports an increase in attendance of 211%. Improvement in attendance may be attributable to the outstanding performance of the Indian counselor aides and teacher aides. There are 115 counselor aides and teacher aides employed in the 42 JOM schools. These Indian aides are also responsible for a positive attitude change on the part of the Indian students. There is a marked increase in the Indian participation in extra-curricular activities. There is also a noticeable drop in the number of poor work slips sent home at each grading period.

TEACHER AIDES

There are 70 teacher aides employed by the 42 school districts. They are functioning in areas of remedial special education, special tutors, teacher assistants, and consultants on Indian Culture. Superintendents and certificated school personnel report that significant changes are being observed in all areas where aides are assisting the regular teachers. Several teacher aides take over classes completely and, in a number of cases, are teaching reading.

IN-SERVICE TRAINING

Plans are being formulated to provide an opportunity for all the Indian aides to earn an Associate of Arts Degree. Ten Community Colleges have offered to cooperated in the training program. Ninety percent of the Indian aides canvassed express a desire to work toward an A.A. degree, B.A. degree or a regular teaching certificate. Most aides have families and to take residence work on a college campus would work a hardship where the person is a mother. (Eighty percent of Indian aides are mothers having one to seven children).

Ways are being sought to provide academic, professional improvement courses taught at the local community -- using the school facilities.

Summer school classes are being planned at University of Washington, Western Washington State College, Eastern Washington State College, and Central Washington State College. It is expected that one-third of all the Indian aides would request to attend summer sessions. Aides are usually on a nine-month salary (many take home less than $300 per month). Funds are desperately

needed to assist Indian aides in all pursuits of inservice training and professional upgrading. The aides themselves contantly express a need to take course work and acquire skills to help them become more effective counselors ard teachers of reading. Estimates on in-service training funds for Summer of 1973 are as follows:

For six-weeks summer session for one Indian aide:

Fees and transportation	$100.00
Room and board	450.00
	$550.00
Number of aides, 30.....	x 30
Needed for summer of 1973.....	$16,500.00

It is hoped that the FY 1974 JOM budget will enable local school districts to support in-service training on a regional basis by paying tuition and travel for aides to attend nearby community colleges on an evening schedule.

JOM PARENT COMMITTEES

A very vital aspect of the JOM program is the Parent Education Committee. Effective functioning of the local school JOM projects depends on this committee. As communities become more involved with school affairs, one can see the growth into a community education of Indian children. Much remains yet to be done in assisting parent groups to become more knowledgeable on education matters. Training of the committee workers is vital at this very time. More time, expertise and funds must be made available immediately to conduct in-service training for committees.

A handbook has just been published to serve as guidelines to assist committees to carry on their role in the JOM program.

Senator ABOUREZK. Lucy Covington, you are the final witness of the day and I just might announce that Mrs. Covington's testimony will terminate the hearings on this legislation.

We are very happy to have you today, Mrs. Covington. We have talked to Mrs. Covington before, and we know her concern and interest in this area.

STATEMENT OF LUCY COVINGTON, FIRST VICE PRESIDENT, NORTHWEST AFFILIATED TRIBES

Mrs. COVINGTON. Thank you very much, Mr. Chairman. I am the delegate from the Northwest Affiliated Tribes where I serve as first vice president because the president did not have tribal funds to come and present the affiliated tribes statement. I am also representing the Colville Confederated Tribes of the State of Washington.

We, the northwest tribes, have experienced the effects of the lack of proper education for Indian children for several generations. We have seen Indian people attempt to better their lives and the lives of their families only to be put down because of their lack of education and training.

Due to this lack of education, the Indian people of this country have been unable to serve equally in public office or otherwise participate in Government.

Therefore we have not had a voice in policy decisions affecting our destiny. How long has Johnson-O'Malley been available? The Indians haven't known how to control the Johnson-O'Malley program. This must not happen again.

We will manage and direct the use of these funds this time. The money must be tribally controlled. Indian schools belong in Indian communities. If the old way of sending Indian students out of the Indian communities had been successful, we would be educated by now.

Sir, I believe in that part of the statement somewhere the stenographer left out some wording. This does not mean that we do not wish to continue with boarding schools, we do. And, I don't want this to be misunderstood.

This situation is clearly the result of two factors to which we have been subjected over the last 100 years or more. First there was and still is the fact of discrimination against Indians by the non-Indian community.

Second, there has been the lack of implementing programs by local, State and Federal governments for the advancement of educational opportunities for Indians. Education is a valuable tool for the survival and dignity of any people.

A concerted effort has been made in this country to keep this tool out of the hands of the Indian. This, however, has not worked. We have educated ourselves in many other ways. We have passed on our traditions. We will persist in our Indian ways.

It is against this background that we wish to express our support for S. 1017, the Indian Self-determination and Education Reform Act of 1973. We support this bill and its attempt to recognize the rights of the Indian people for self-determination.

In addition, we support it because it attempts to increase the quantity and quality of educational services and opportunities to be made available to Indian children and adults.

This will provide the tools of self-determination and progress necessary to strengthen our people. We Indian people wish to solve our own problems and only ask that we be given an equal opportunity and equal resources to use for that purpose.

This bill has many of the favorable features of the Johnson-O'Malley Act. First, it includes programs for pre-kindergarten and adult education. We look forward to the availability of adult education programs in our community. These programs will allow the development of needed skills in those persons who were neglected by the system of the past.

Our youth are our greatest resource in building an Indian future. Early childhood programs carefully designed to meet the special needs of our Indian children will enable all our youth to realize their full potential in life.

The section concerning school construction will be a real help in overcoming the problems of poor school systems in various Indian communities. Our problem is a shortage of Indian teachers and administrators as well as a shortage of curriculum and student services to serve Indian communities.

School facilities have been poorly located and sadly neglected. The provisions of this act for new construction will meet an urgent need in many Indian communities.

The summer months when our students are not enrolled in educational programs provide an excellent opportunity for them to participate in the proposed youth intern program. The fields involved in the youth intern program can provide useful experience for Indian youth in activities related to their future choice of careers on Indian reservations.

Requiring the Secretary to carry out the specified negotiations in these fields will insure the quality of the program. We wish to suggest that particular efforts be made to maintain this program in such Government agencies that are responsible for the management and protection of our Indian natural resources and are located on and bordering the reservation.

The portion of the act which allows for the development of professionals in Indian education is urgently needed. We have too long been in the position of having to depend on non-Indians to meet the educational needs of our Indian people. Despite good intentions, a non-Indian cannot really understand the needs, desires, and frustrations of an Indian in this country.

He must always stand outside any full understandig of Indian problems and position. One of the results of the educational situation in Indian communities has been the lack of trained professionals in Indian education.

The Johnson-O'Malley Act which was designed to help in the development of those professionals has never been sufficiently implemented in this area. The related section of the proposed bill recognizes this need for the expanded professional involvement of Indian people in the Indian education.

In recent years there has been an increase in the number of schools controlled and operated by tribes as part of the tribal government

function. Under this bill available benefits will be restricted to State public schools. For example, on the Colville Reservation we are in the process of obtaining control of an elementary boarding school for our Indian children. Under the definition in the proposed bill the tribal school will not be eligible for the benefits under this program.

Because of the restrictive definition of the "local education agency," tribal schools in the past have been ineligible to apply for and receive the financial resources of specific Federal programs. Thus, if the present bill is not amended to include these schools owned and operated by tribal governments, they will be unable to obtain the benefits of the Indian Self-determination and Educational Reform Act of 1975.

We therefore request that this section of the bill be amended so that the definition of school and school desires include our important tribal schools and other nonlocal educational agencies.

Under the Johnson-O'Malley Act, parent advisory committees have been frustrated by their purely advisory capacity. They have not had the authority or power to implement the parent advisory committee's desired programs.

Such a committee can never hope to overcome the challenges presented by the local school board determined not to carrry out Indian educational reform. We believe that an effective community education committee should be tied into the already existing structures of local tribal government or local Indian organizations.

Tribal governments or Indian organizations already have the structural knowledge and resources to evaluate decisions and programs in the local community. Such a tie-in would provide the local community educational committee of Indian parents with the authority to implement needed educational reform. We therefore request that this section of the bill be amended to insure this authority on the part of the community education committee.

Increased funding for public health services and facilities for Indians must be provided under this act, including funds for sanitation projects and existing homes, and so forth.

Sir, this is something that was left out completely so it will be submitted to you. Unless increased appropriations are aggressively sought through the directive spelled out in this legislation, Indian tribes might well find themselves merely contracting the frustrations of Public Health Service administrators.

The Northwest Affiliated Tribes support the passage of Senate bill 1017, with the suggested amendments. Creative administration of this educational reform program will be necessary if it is to be effective. Indian people must have the opportunity and responsibility for the control of this program.

Thank you.

Mr. Chairman, I also have some statements here from Roger Jim, concerning S. 1342, and S. 1343 and S. 1340.

Senator ABOUREZK. We will accept those statements and have them printed into the record in full, and we thank you.

[Statement of Mr. Jim follows:]

Statement of

Roger R. Jim, Sr., President

Affiliated Tribes of Northwest Indians

S-1342

The act attempts to reach at the main items Indians have been deprived of.

Ed ion has been statistically below standard. Only those who were determined to get ahead progressed above the government school and went into higher education.

Medical attention is limited because money is not appropriated to assist or provide enough, or adequate, services for the Indian people. Clinics are over-crowded and do not fit the present demand. Personnel is, at this time, in fear of being replaced by Indians, which should have happened a long time ago. Relief of distress has been nonexistent, to my knowledge. The need for health facilities in the Northwest is great because of the few clinics on the reservations and the one available hospital at Seattle.

The bill refers to transfer of maintenance and operation of hospitals and health facilities to PHS for Indians. The hospital at Seattle could easily fit in this area and provide more care for Indian people. The Northwest is in need of health facilities for Indian people. The Section 9 only refers to detailing of personnel to assist tribes and have no reference to facilities.

Social welfare is a big problem on Indian reservations. The State has held very few fair hearings for Indian people. They would rather deny, than assist them in their problems. The Indian people of the Northwest want the eligibility requirements changed in regard to trust resources. Trust property and trust income should not be an available resource.

Welfare problems of Indians can be reduced by understanding social workers and utilization of the law to its fullest. Today it appears that local officials are the hardest upon their neighbors in regard to need of assistance.

URGE PASSAGE OF THIS BILL.

Statement of

Roger R. Jim, Sr., President

Affiliated Tribes of Northwest Indians

S-1343

The Indian tribes that are in position to assume control have been waiting for such a bill as S-1343. The reasons being many: negativeness of civil service employees to Indian wants and progressiveness is only one. Fear of being replaced is high among career officers in PHS.

Many programs do not reach the people intended, or do not do an adequate job in accomplishment. The Yakima Nation is directing the P.L. 86-121 Project on the reservation,and the monies under the program is doing a better quality job under direction of the Tribal Council for its members.

Many services under BIA and PHS can be directed by the Indian leaders who can do a better job than is now being done.

URGE PASSAGE OF THIS BILL THAT WILL ALLOW SELF-DETERMINATION WITHOUT TERMINATION.

STATEMENT OF

ROGER R. JIM, SR., PRESIDENT

AFFILIATED TRIBES OF NORTHWEST INDIANS

S-1340

Directing their own programs on their reservations has been one of the priorities set for tribal leaders. It has been denied for one reason or another up to this date. Enaction of the bill would allow for this. But the question is in regard to employee's position regarding his termination, for whatever reason the tribe felt was necessary, and of the procedure after the act of dismissal.

The tribes have asked for direction of the federal programs because of the negative attitude of some civil service employees. The tribe could not affect any change in personnel because of the various laws for the federal employee protecting him from tribal recommendations for termination. This change would give the tribe the right to change or replace any employee for whatever reason that was necessary. The move for a government employee to retain his civil service status when working for the tribe is good.

The tribes have always rejected paying taxes, and, undoubtedly, this means paying a tax for the civil service benefits.

In the move for self-determination, the Indians must have input into the regulations the President prescribes to carry out the intent of this act.

URGE ENACTMENT OF THIS BILL, BUT WITH RESERVATION OF PAYING TAXES.

98-143 O - 73 -- 14

Senator ABOUREZK. Mrs. Covington, I wish to compliment you and commend you for a well thought out statement. And I want you to know that Senator Jackson and I both very much appreciate your endorsement of S. 1017, and I further want to say that I think you are extremely lucky to have a Senator like Senator Jackson who takes the interest of the Indian people at heart and is willing to work hard and to provide assistance to our subcommittee, and of course to the full Interior Committee for the implementation of Indian self-determination.

And, I think you should be proud of your Senator out there; he has done an excellent job in that area.

Mrs. COVINGTON. Thank you very much. For the first time we didn't have to fight a bill, it was one we could support and I am very proud of that.

Senator ABOUREZK. That doesn't happen too often, does it?

Thank you very much. Does any of the staff have any questions?

Mr. GERARD. Mrs. Covington, just one question. You referred to a contract school in your testimony, is that a former Bureau school or a mission school?

Mrs. COVINGTON. It is the St. Mary's Mission School, it has been in existence probably since before my time, and at the present time—the tribe is taking over because it has a very difficult time to exist. The tribe supplements funds to it and most of our students who come out of this school are good college material.

Mr. GERARD. We can't answer your question right at the moment but we will take that fact into account as the staff deliberates further with the Senators on the bill.

Mr. COVINGTON. I believe most of the papers are just about ready and most of them are signed, it is just a transfer from St. Mary's Mission to the Colville Tribe. It is the only school we have had in existence on the Colville Reservation. As you know, we don't have any other nearby.

Senator ABOUREZK. Thank you very much, Mrs. Covington.

These hearings are now adjourned. That is the extent of the testimony on this particular legislation.

The next hearings of this subcommittee are scheduled for June 12, on S. 1786, which is a bill to require that the Bureau of Indian Affairs and the Indian Health Service come back to this Congress for annual authorizations.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

APPENDIX

[Under authority previously granted, the following statements and communications were ordered printed:]

HENRY M. JACKSON, WASH., CHAIRMAN
ALAN BIBLE, NEV. — PAUL J. FANNIN, ARIZ.
FRANK CHURCH, IDAHO — CLIFFORD P. HANSEN, WYO.
LEE METCALF, MONT. — MARK O. HATFIELD, OREG.
J. BENNETT JOHNSTON, JR., LA. — JAMES L. BUCKLEY, N.Y.
JAMES ABOUREZK, S. DAK. — JAMES A. MC CLURE, IDAHO
FLOYD K. HASKELL, COLO. — DEWEY F. BARTLETT, OKLA.
JERRY T. VERKLER, STAFF DIRECTOR

United States Senate
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
WASHINGTON, D.C. 20510

JUN 29 1973

28 June 1973

The Honorable James S. Abourezk
Chairman
Subcommittee on Indian Affairs
3106 Senate Office Building
Washington, D.C. 20510

Dear Chairman Abourezk:

Please have the enclosed letter from Dr. Willard R. Anderson included in the hearing record on S. 1017.

Very truly yours,

Lee Metcalf

Enclosure

Dr. Willard R. Anderson
Superintendent

PRINCIPALS
LARRAE ROCHELEAU
LUKE DYCKE
GORDON HALVERSON
FLORENCE HANSON
ROY MARTINSEN
JAY McCALLUM

Hardin Public Schools

Marjorie MacClean
District Clerk

BOARD OF TRUSTEES
DON BEARY, Ch.
ED JACOBSON, Vice Ch.
DR. MICHAEL DOWNING
REINHOLD JABS
EDYTHE McCLEARY
ROY NAYEMATSU

ELEMENTARY DISTRICT NO. 17-H — HIGH SCHOOL DISTRICT NO. 1
BIG HORN COUNTY
HARDIN, MONTANA
59034

JUN 19 1973

June 13, 1973

Senator Lee Metcalf
United States Senate
Washington, D.C. 20510

Dear Senator Metcalf:

Through the years, as you have championed the causes of education, your awareness and knowledge of the need for improved Indian education has always been evident. This letter is, first of all, to reinforce your support of Senate Bill #1017, and secondly to ask your help in providing more direct assistance for public schools, who because of local politics and prejudice, are sometimes unable to serve the best interests of the Indian child.

In District 17H we have three separate schools located in three separate communities; Hardin, Fort Smith and Crow Agency. Hardin is composed chiefly of local merchants and related agriculture, Fort Smith is primarily government related employees and Crow Agency is 95% Crow Indian and Indian related employees.

To pass a bond issue for school facilities we not only have to get support for the funding, but an agreement as to where the funding will go. Up to two years ago the District was unable to pass operation levies, and last year a building reserve levy failed and the operation levy took three attempts. This year we were able to pass an operation levy as well as an 11 mill building reserve. However, eleven mill in our District will not even keep up with the present rate of inflation and in five years we will still have less than a half million dollars. Four of our buildings are over 40 years old and one is over 50 years old.

If this District is to meet its obligation to educate the Indian child, inadequate facilities are not the answer. Within the next three years we should remodel or build new facilities for over 750 students at an estimated cost of three to four million dollars. I see no solution to this problem through any of the present programs now in operation. Present programs do not apply because we do have bonding capacity which could be used if it were not for the human elements involved. We also question whether this should be a local tax responsibility, or if the community at this point could possibly bear this financial burden. At least one other school in the District is in about the same condition as the two Indian related schools in question.

The records in District 17H clearly indicate the past history of failure to educate the Indian child. Legislation, such as Johnson O'Malley, Bilingual and the Indian Education Act have helped us to deal with staffing and programs relating to Indian education. We now need legislation with the funding capacity and flexibility to include major facility improvements which will allow local schools to house and operate already developed programs.

Our hope is that Senate Bill #1017 in its final form will be able to deal with the total Indian education problem. We do support your efforts in this direction and ask only that Local Education Agencies be given consideration in the administration of these funds.

Kindest personal regards,

W. R. Anderson
Superintendent

Don Beary
Board Chairman

WRA/mb

Dr. Willard R. Andersen
Superintendent

PRINCIPALS
LAURAZ ROCHELEAU
LUKE DYCKE
GORDON HALVERSON
FLORENCE MANION
ROY MARTINSEN
JAY McCALLUM

Marjorie MacCleon
District Clerk

BOARD OF TRUSTEES
DON BEARY, Ch.
ED JACOBSON, Vice Ch.
DR. MICHAEL DOWNING
REINHOLD JABS
EDYTHE McCLEARY
ROY NAVEMATSU

Hardin Public Schools

ELEMENTARY DISTRICT NO. 17-H — HIGH SCHOOL DISTRICT NO. 1
BIG HORN COUNTY
HARDIN MONTANA
59034

STATEMENT OF FACILITY NEEDS

School District 17-H, Big Horn County, Montana

On April 20, 1972, the attached statement was presented to the Board of Trustees of District 17-H as general information for developing a plan of procedure.

Inflation and increased enrollments at both Crow Agency and at the junior high level have created a need for additional funding, but the over-all basic need is still the same.

Crow Agency School is over 40 years old and certainly some technical assistance will be required to determine the advisability of remodeling or replacement to meet school needs. Estimated costs at this time would be from $600,000 to $1,500,000. Minimum school requirements could be met at the lower figure, but to expand the bilingual - biculture program to meet the Community needs of the Crow Agency area could easily require funding in excess of $1,500,000. Basic plans should include school facilities for a minimum of 350 students and a community auditorium to seat 400 people.

As our bilingual - biculture program expands through the grades the need for additional junior high school space becomes more acute. The program has now reached the 4th grade and these students will be entering inadequate facilities in two years. The present building was built about 1920 without any provision for the technical or space needs of this generation. If this community is to develop a total school system to meet the needs of ALL children the present junior high school facilities are not in accord with the intent of District 17-H. An estimate of $1,500,000 to $2,500,000 would be required to remodel or build junior high school facilities for 400 students.

District 17-H is now in the process of developing a building reserve fund through local taxes but will need additional funding if any action is to be seriously contemplated within the next five years.

Chairman
District 17-H
522 No. Center Avenue
Hardin, Montana 59034

SCHOOL DISTRICT 1 & 17-H

EDUCATIONAL NEEDS

April 20, 1972

Crow Agency School

Original Building
- 14 Classrooms (40 yrs. old)
- 1 Multipurpose room with stage

New Addition
- 4 Classrooms

Temporary
- 1 Kindergarten room (CAP)
- 5 Portable Classrooms

Building Needs

Classrooms
- 2 Kindergarten Rooms
- 4 Grade 1 Rooms
- 15 Grade 2-6 Rooms
- 1 Library & Media Center With Remedial Facilities
- 1 Special Education
- 1 Medical Testing Center
- 1 Multi-purpose Room
- 1 Administrative & Teacher Work Space (must include space for special programs such as Bilingual, COP & Teacher Corps.)

Total estimate	$600,000	Building
Total estimate per Yr.	$100,000	Educational
Special Programs	30,000	
Teacher Aides	60,000	
Equipment & Supplies	6,000	
Staff Training & Misc.	4,000	

District Building needs directly related to Indian Education

New Junior High School (Grades 9-12)

Estimated Students	400
Estimated Cost	$1,500,000

School Financial Picture

	1971-72 Budgets		1972-73 Budgets	
	Elem.	H.S.	Elem.	H.S.
Foundation	$751,009	$335,664	$760,204	$361,800
Special Levy	153,379	62,293	199,938	72,069
Total	$904,388	$397,957	$960,142	$433,869

Federal Monies - Related Directly to Indian Education

	H.S.	Both	Elem.
874	$60,000		$160,000
Johnson O'Malley	7,000		41,000
COP		$67,000	
Teacher Corps		$77,000	
Bilingual		$180,000	
ESEA		$72,000	

	District No. 1	District 17-H
Assessed Value	$37,711,892	$31,262,501
Taxable Value	10,388,257	8,508,487

District Tax	59.39 mill
County Tax	48.76 mill
Total	108.15 mill

32% increase over 1970-71

Voted Increase attempted for 1972-73

H.S.	.64 mill	Failed April 1, 1972 (rerun May 9, 1972)
Elem.	4.70 mills	Failed April 1, 1972 (rerun May 9, 1972)

Building Reserve Attempted

H.S.	5	mill	Failed April 1, 1972 (will not be rerun)
Elem.	5	mill	Failed April 1, 1972 (will not be rerun)

Summary of Educational Needs directly related to Indian Education

The history of the Crow People is one of cooperation and willingness to live in harmony with the non-Indian culture. However, there is also a strong feeling to preserve their own self-image and a mutual respect for their history, culture and values.

Through the years the Crow People have been able to preserve their language, and much of their culture in spite of, sometimes planned, but more often, an unawareness of the Indian's needs and feelings.

The schools of District 1 & 17-H are obligated to become aware of all the needs and the feelings of all students if these schools are to continue as the basic educational tool for universal education in this community.

The schools of this District serve a bilingual and bicultural community and must assume the responsibility of allowing all students an equal opportunity to develop academically and socially in harmony with a bilingual and a bicultural community.

The Crow language is a useful educational tool and will be developed as such. As a communication tool the Crow language does and will continue to serve a most useful purpose.

The Crow culture and history will be recorded and studied as an intricate part of the total culture and history of this community. No plan has seriously been requested to return to the days of the tepee or the sod hut, but there is a need for understanding the past, if one is to accept the present, and become a part of the future. Each child has a right to expect an education which will allow him to compete in any culture. Education is the freedom that gives man the privilege of living in the culture of his choice.

The building and program needs of District 1 and 17-H reflect the overall plan to implement a bilingual and bicultural education system for this community.

OFFICE OF THE PRESIDENT

June 12, 1973

JUN

The Honorable James G. Abourezk
1105 New Senate Office Building
Washington, D. C. 20510

Dear Senator Abourezk:

I want to express NEA's appreciation for the opportunity we were given to formally register our support for S. 1017, "The Indian Self-Determination and Educational Reform Act." It was a pleasure to see you again and to testify before the Subcommittee on Indian Affairs on June 4.

As you may recall, I expressed NEA's support for the entire bill so long as it meets with the approval of the majority of the Indian people. In my testimony, I spoke mainly to Part A of Title II of the bill, indicating in general that NEA also favors the balance of the proposed legislation. During the hearing, I was asked to submit NEA's reactions to Parts B, C, D, E, F, and G, as well. This letter is intended to transmit NEA's comments for the record.

Part B. Development of Professionals in Indian Education:

We feel that this authority, which specifically authorizes the Secretary of the Interior to make grants and contracts for the purpose of preparing persons to serve in public schools at all levels, is necessary. We suggest that the bill be amended to insure involvement of the Indian people in determining the content of programs funded under this Part. The suggestion made by other witnesses that the grants or contracts be with Indian tribes or tribal organizations, for subcontracting with institutions, is worth serious consideration.

Part C. School Construction:

We strongly support this provision and urge its enactment. PL 81-815 clearly does not even begin to meet the need. Since PL 81-815 gives preference--and properly so--to schools affected by disasters, the construction of schools on Indian reservations is further set back each year. The current backlog is estimated to be well over $100 million. The need is great.

Part D. Youth Intern Program:

This is a particularly attractive feature of S. 1017. It will give young Indian students an opportunity not only to earn money for their education, but also to explore the various kinds of career opportunities that they too often believe are unattainable.

Part E. Educational Research and Development:

We believe this is a necessary part of an Indian education package. We suggest that language be included designating preference to Indian institutions or organizations for contracts or grants.

Part F. Adult, Vocational and Early Childhood Education:

This Part directs the Secretary of the Interior to bring to the 94th Congress recommendations for programs in adult, vocational, early childhood, special and higher education. Although the Department of the Interior may presently be authorized to make such recommendations, none have been made to date. Congressional mandate and special funding as proposed herein hopefully would lead to development of such recommendations.

Part G. General Provisions:

While all of these provisions are good, we are especially pleased with Sec. 220, which provides the opportunity for non-Indian children to participate in programs if parents of the affected children acquiesce. Properly, it precludes counting such non-Indian children under the funding section.

Personally, I am concerned about some other federal programs which are actually promoting racial and economic segregation within classrooms because of strict federal guidelines. We believe that providing non-Indian children the opportunity to learn more of the culture and customs of their Indian peers will be a major step towards solving the prejudices that exist in some communities.

In my testimony on Part A of S. 1017, I neglected to commend the sponsors for the provision in Sec. 204 (b) which provides for advance funding. This is a most desirable feature which, if enacted, will give stability to the program as well as make possible efficient and economical use of the funds. We strongly urge that this feature be retained in the final draft of the bill. I trust these comments will be useful to the Committee. If we can be of further assistance, please call on us.

Sincerely,

Catharine Barrett

(Mrs.) Catharine Barrett
President
National Education Association

CB:HW

June 18, 1973

Honorable Kent Frizzell
Solicitor
Department of the Interior
Washington, D.C. 20240

Dear Mr. Frizzell:

During testimony at our recent hearings on S. 1017, the "Indian Self-Determination and Educational Reform Act of 1973", the question was raised as to whether a tribe's sovereign immunity would be lost should it contract with the Bureau of Indian Affairs or the Indian Health Service to administer Indian programs. This query was raised in relation to the recent Federal court decision, in which the court, in ruling that the 1968 Civil Rights Act suspended tribal sovereign immunity in cases brought under it, made the statement that the tribe had also waived immunity when it contracted with the BIA for operation of the law and order services on the reservation (Lancassir v. Leekity, Vol. 334 of the Federal Supplemental Reporter, page 370, New Mexico District Court 1971 Cas4

Could the Committee please have the benefit of your opinion as to the question of whether a tribe, when contracting for services on its reservation, under S. 1017, is liable to have waived its sovereign immunity with respect to the scope of that contract.

During the 92d Congress, the "Indian Self-Determination Act appeared as S. 3157. In a letter dated June 13, 1972, I raised similar questions to your predecessor, Mr. Mitchell Melich. Our records fail to disclose any response to that inquiry. We would appreciate an immediate response to this letter concerning this matter.

Sincerely yours,

Henry M. Jackson
Chairman

HMJ/fgk

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SENATE INTERIOR COMMITTEE
RECEIVED
AUG 6 1973
WASHINGTON, D. C. 20510

IN REPLY REFER TO:

AUG 1 1973

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Jackson:

This is in response to your June 18, 1973, letter requesting our views on whether tribal immunity from suit would be lost should a tribe contract with the Bureau of Indian Affairs or the Indian Health Service to administer federal Indian programs pursuant to pending legislation such as S. 1017.

An Indian tribe is immune from suit in any court. Turner v. United States, et al., 248 U.S. 354, 358 (1919). While an Indian tribe cannot waive its immunity without the consent of Congress [United States v. United States Fidelity and Guaranty Co., et al., 309 U.S. 506 (1940); Adams, et al. v. Murphy, 165 Fed. 304, 308-9 (8th Cir., 1908)' Thebo v. Choctaw Tribe, et al., 66 Fed. 372, 376 (8th Cir., 1895)], Congress can waive a tribe's immunity without the tribe's agreement. See Fontenelle v. Omaha Tribe of Nebraska, 430 F.2d 143 (8th Cir., 1970).

Tribal immunity from suit extends to cases sounding in contract [United States v. United States Fidelity and Guaranty Co., et al., 309 U.S. 506 (1940)], cases in tort [Turner v. United States, et al.,248 U.S. 354 (1919)] and in cases involving title to lands (25 U.S.C. § 177). A tribe is also immune from suits based on the torts of its agents since a sovereign is not bound by, or responsible for, the wrongful acts of its agents unless the sovereign legislatively assumes such responsibility. 54 Am. Jur., United States, § 136.

The tribes' immunity does not prevent the United States from suing a tribe. Cf., Principality of

Monaco v. Mississippi, 292 U.S. 313 (1934). A state, however, cannot sue a tribe. Employment Security Dept. v. Cheyenne River Sioux Tribe, 119 N.W.2d 285 (S.D., 1963).

Congress can waive tribal immunity from suit and has done so in the past. Section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. § 477, authorizes the Secretary of the Interior to issue corporate charters to Indian tribes conveying to the incorporated tribe "such * * * powers as may be incidental to the conduct of corporate business, not inconsistent with law * * * ." The fact that Congress has authorized the use of a corporation in itself warrants the conclusion that the corporation has the power to sue and be sued. Lattin, The Law of Corporations 83 (Foundation Press, 1959). Some tribal corporate charters, while explicitly authorizing the corporation to sue and be sued, limit the corporation's liability to chattels especially pledged or assigned. These restrictions are respected by some courts and ignored by others. Compare Maryland Casualty Co. v. Citizens National Bank, et al., 361 F.2d 517 (5th Cir., 1966) with Fontenelle, et al. v. Omaha Tribe of Nebraska, et al., 430 F.2d 143 (8th Cir., 1970).

Courts have held that a section 17 corporation can be sued in quiet title actions (Fontenelle v. Omaha Tribe), in actions arising from a contract (Maryland Casualty Co. v. Citizens National Bank), and in actions founded in tort [Martinez v. Southern Ute Tribe, 374 P.2d 691 (Colo., 1962); but see Martinez v. Southern Ute Tribe of the Southern Ute Reservation, et al., 249 F.2d 915 (10th Cir., 1957), cert. denied, 356 U.S. 960 (1958)].

A section 17 tribal corporation is, of course, distinct from the tribal government organized under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, and, theoretically, tribal assets could not be called on to satisfy judgments against the corporation, nor should the corporation be liable for acts done by the tribe in a governmental capacity.

The Indian Civil Rights Act of 1968, 25 U.S.C. § 1301-1303, represents a second Congressional waiver of

tribal immunity. Unlike section 17 of the Indian Reorganization Act, the Civil Rights Act permits a court to review tribal governmental actions. Although the Civil Rights Act specifically grants only habeas corpus jurisdiction to the federal courts, it appears settled that the courts feel free to fashion any appropriate remedy. See Dodge v. Nakai, 298 F. Supp. 17 (D. Ariz., 1968).

The case of Loncassion v. Leekity, 334 F. Supp. 370 (D. N.Mex., 1971) holds that the Civil Rights Act of 1968 authorizes courts to enter money judgments against Indian tribes for tortious actions. The court found that the tribe had, by contract, assumed responsibility for the torts of its agents and that the Civil Rights Act of 1968 had waived the tribe's immunity from suit sufficiently to permit a court to enforce the responsibility which the tribe had assumed.

The Civil Rights Act of 1968, not the tribal contract, is the only possible basis for finding a waiver of immunity. The contract itself could not waive immunity since it was not Congressional action, but apparently the Loncassion court felt the tribe had sufficient authority to accept responsibility for the tortious acts of its agents. This interpretation of the 1968 act - that it imposes tort liability on a tribe - may or may not be sound. This office does not concur with it. It is, however, an understandable decision if it is realized that if the action had been committed by a federal agent, the victim could take advantage of a number of federal statutes waiving the Federal Government's immunity.

Whether other courts will follow Loncassion is, of course, a matter of conjecture. The obvious method to avoid the effects Loncassion would be to delete any contractual provision which could be construed as an acceptance of tribal liability for the acts of its agents. The more important problem, however, is assuring that contracts with Indian tribes do not result in a loss of rights to others and, at the same time, that the tribe is protected against wholesale depletion of its assets through lawsuits. In response to this dual need, the Administration's proposed bill, S. 1343, provides that each tribe must carry liability insurance to protect third

parties and that the tribe's immunity from suit is waived, but only up to the amounts set out in the face of the insurance policy.

We regret that we did not respond to your earlier letter. Apparently the matter of a specific response was overlooked by our legislative counsel in the course of preparing language for S. 1343 in response to the problems raised by your letter and that office neglected to advise you that the language was drafted in response to your earlier letter.

Sincerely yours,

Kent Burgett

Solicitor

STATE OF OKLAHOMA

OKLAHOMA INDIAN AFFAIRS COMMISSION

4901 N. Lincoln Blvd.
Oklahoma City, Oklahoma 73105
Phone 405 521-3828

June 14, 1973

The Honorable Dewey F. Bartlett
United States Senate
4215 Dirksen Building
First & C Street, N. E.
Washington, D. C. 20510

Dear Senator Bartlett:

As you know there is a great amount of concern among Indian people in regards to Senate Bill 1017.

The Oklahoma Indian Affairs Commission has had an opportunity to make an individual analysis of the Bill, and the implication the passage of such a Bill would have. The feeling at the present time is that the Commission opposes Part A of Senate Bill 1017. We feel that the Bill does away with the Johnson-O'Malley Act, and we also feel that the requirements in the Bill can not be implemented under proposed funding. We suggest that the Bill be rewritten and that the appropriation be doubled and signoff authority be given to local advisory boards.

Our feeling is that Part B of the Bill is a needed step and should be retained if rewritten. We thank you for your assistance in this matter.

If our office can be of any further assistance please do not hesitate to contact us.

Sincerely,

Hickory Starr, Jr.
Executive Director

HS:mb

98-143 O - 73 -- 15

PROJECTED BUDGET COSTS FOR S.1017 (NEW MEXICO & SIX SCHOOL DISTRICTS)

	No. of Indian Students	Counselors (1 to 50 for grades 5-12)	Avg. Cost of Counselor	Total Cost	No. of Students K-6	No. of Teacher Aides (1-20)	Avg. Cost of Teacher Aides	Total Cost of Aides K-6	No. of Students 7-12	No. of Aides (1-30)	Cost of Aides	Total Cost of Aides 7-12	Total Cost of all Aides	Total Cost of Program	Present J.O.M. Budget
NEW MEXICO	18,758	12,600 (212)	$9,000	1,908,000	11,356	568	2,700	1,533,600	7,392	246	2,700	664,200	2,197,800	4,105,800	3,489,919
ALLUP	8,031	4,317 (86)	9,000	774,000	5,165	258	2,700	696,600	2,866	96	2,700	259,200	955,800	1,729,800	1,022,871
MINGTON	515	284 (10)	9,000	90,000	315	16	2,700	43,200	200	7	2,700	18,900	108,900	152,100	58,147
GDALENA	339	165 (3)	9,000	27,000	224	11	2,700	29,700	115	4	2,700	10,800	40,500	67,500	62,071
ROSA	472	222 (4)	9,000	36,000	331	17	2,700	45,900	141	5	2,700	13,500	59,400	95,400	131,877
ANTS	993	809 (16)	9,000	144,000	384	19	2,700	45,900	659	22	2,700	59,400	105,300	249,300	346,617
NAJILLO	1,090	848 (17)	9,000	153,000	489	25	2,700	67,500	601	20	2,700	54,000	121,500	274,500	242,998

STATE OF OKLAHOMA

OKLAHOMA INDIAN AFFAIRS COMMISSION
4901 N. Lincoln Blvd.
Oklahoma City, Oklahoma 73105
Phone 405 521-3828

A N A L Y S I S

S.1017
(Jackson Bill)

--Cited as the "Indian Self-Determination and Education Reform Act of 1973." --

This Bill declares:

1. Self-determination through maximum involvement and participation in educational and other Federal services to Indians
2. Establishment of a meaningful Indian self-determination policy
3. Quantity and quality Indian educational services and opportunities

TITLE I -- THE INDIAN SELF DETERMINATION ACT

1. Contracts by the Secretary of the Interior for programs and services (in his discretion and upon request of any Indian tribe)
2. Contracts by the Secretary of Health, Education and Welfare for health and sanitation facilities programs
3. Grants to Indian tribal organizations for planning, training, evaluation and other activities designed to make it possible for tribal organizations to enter into contracts
4. Detail of personnel (civil service employees) to tribal organizations for assisting in planning, conduct, and administration of programs for a period of up to 180 days, and may be extended for a period not to exceed 90 days.
5. Administration provisions -- contracts with tribal organizations shall be in accordance with all Federal contracting laws and regulations; Secretary shall promulgate regulations to this Title no later than six months after enactment of this Act; and shall provide opportunity for hearings no later than 30 days prior to the promulgation of such regulations.

TITLE II -- THE INDIAN EDUCATIONAL REFORM ACT OF 1973

Part A - Education of Indians in Public Schools

-- Secretary is authorized to enter into contracts with State for providing education to Indians enrolled in public schools, provided the State has a plan which assures that:

1. all taxable property within each school district is taxed at a rate equal to the average property tax rate in five comparable school districts

2. all P.L. 874 funds received shall be considered local tax income

3. State and local per capita payments are not less than the average of such payments made to five comparable school districts

4. funds provided shall be utilized by the contractor so as to provide Indians enrolled in schools with:

    a. guidance and counseling services
    b. curriculum development programs
    c. teacher aides (ratio of 1-20 for K-6 and 1-30 for grades 7-12)
    d. educational personnel serving Indians receive salaries, incuding fringe benefits, equal to average of professional educators' salaries in district or State, whichever is higher.
    e. supplemental school lunch and school breakfast funds for Indians
    f. school nursing services for Indians
    g. summer school programs for Indians
    h. other educational programs

5. a maximum of 3% of funds to contractor shall be available for administrative and consultative costs

6. establishment of a community education committee (if local school board is not composed of a majority of Indians) elected by parents of Indian students

7. reimbursement of per capita costs to school districts educating Indian students who reside in Federal boarding facilities

-- The State education agency shall establish an Indian Advisory Council on Education to advise and make recommendations in the preparation of of the State Plan, on the development of other programs, and to evaluate the progress achieved in education of Indians.

-- It should also provide the professional and support staff and administrative services necessary.

Part B - Development of Professionals in Indian Education

-- The Secretary is authorized to establish and administer a program of making grants to, and contracts with higher education institutions for providing fellowships and carrying out programs and projects to train professionals in Indian education.

-- For the first fiscal year after enactment of this Act, $10,000,000 is to be appropriated and $15,000,000 for each of the next two succeeding fiscal years.

Part C - School Contruction

-- construction, acquisition or renovation of facilities in public school districts serving Indian students

-- For each of the first three fiscal years, $30,000,000 is to be appropriated, and such sum as are necessary for each fiscal year thereafter.

Part D - Youth Intern Program

-- to provide meaningful and career-related work opportunities for Indian youth (16 years or older) during the summer months in education, child development, recreation, law, health services, engineering, research, science, government, agriculture and forestry, business and commerce, and other appropriate persuits.

-- For the first fiscal year, $10,000,000 is to be appropriated and $15,000,000 for each of the next two succeeding fiscal years.

Part E - Educational Research and Development

-- grants to and contracts with universities, colleges, public and private nonprofit organizations, and individuals for research in Indian education and for dissemination of information derived from such research.

Part F - Adult, Vocational and Early Childhood Education

-- proposed programs of adult and continuing education, vocational and technical career education, early childhood education, and a review and analysis of existing programs in higher education.

Part G - General Provisions

-- No funds from any grant or contract shall be made available to any local school district unless the quality and standard of education for Indians are equal to that provided all other students.

-- No funds shall be made available to other than public agencies and Indian tribes, institutions and organizations to contract for necessary services.

-- When Indian students comprise the majority, non-Indian students may participate in programs, provided that such participation is approved by the local public school board if such board is composed of a majority of Indians, and by the parents of the non-Indian children, and provided further that such non-Indian children are not counted for the purposes of Section 203 of this Act.

-- Such funds of this Title shall be in addition to, and not replace, other funds provided in Federal programs for the benefit of Indians.

(Note: This does not mean in addition to Johnson-O'Malley; these funds will replace Johnson-O'Malley in 1975).

S. 1017 - Indian Self-Determination and Educational Reform Act of 1973
Sponsored by Senator Jackson and Abourezk

1. Definition of Indian or Indian tribe is exclusive and discriminatory. Eliminates terminated and non-trust land Indians.

2. Does not allow for contracting with non-profit Indian organizations or Inter-tribal groups.

3. Question the wording "...to enter into a contract or contracts with any tribal organization of any such Indian tribe..." Sec. 102
What are the implications of legal sovereignty of tribe with this type of contracting arrangement?

4. Much of bill seems to be rendered ineffective through clause "at discretion of Secretary."

5. Question Sec. 203 a. 1,2,3
What will be the effect on the supplementary nature of the JOM act and the provisions that JOM funds cannot be used in lieu of state aid or result in a decrease of state aid? This seems to eliminate the equal educational opportunities and uniform application of state law provisions which now exist in current JOM regulations.

6. Sec. 203 a. 4 A & F are actually basic support services which should be provided by the public schools to meet minimum state education standards. E would be used, in most instances, to supplant the national lunch program. This total section eliminates some JOM programs which some JOM parent committees feel are necessary e.g. parental expenses and extracurricular activities.

7. No provisions for Indian parent control or direction in programs. Does not allow parents to define own educational needs or goals. Parent committees rendered ineffective by not providing for structure and duties byt leaving up to Secretary to regulate.

8. Sec. 203 a. 7 seems to be a loophole for rip-off.

9. Sec. 203 b no provision (true guarantee) for Indian Advisory Council on Education to be truly representative of tribes suppose to represent. No guarantee against political appointement by state.

Wording "has had the opportunity" seems to be a loop hole so state eudcatio agency can get around Advisory Council. Makes it an ineffective , bureaucratic organization.

10. Sec. 204 lack of stated sum for appropriation makes whole Title useless. Will probably never be funded.

11. Part C - School Construction - totally bypasses Indian tribes and

organizations. No guarantee schools constructed would serve Indian children. Appears to be loophole to provide for general school construction as state or school district's discretion.

12. Part D Secretary is given authority to decide what are appropriate programs. Those mentioned are not really relevant to reservation life or tribal needs. Should be determined by Indian students and the tribe. Appears to be an assimilation or relocation program in disguise.

13. Part E - Money should be given to tribes to research, survey & develop programs in Indian education that meet their needs and are for the benefit of the tribe. There has been too much subsidizing of doctorates and publishing to meet the needs and pocketbooks of non-Indians.

14. General Provisions Sec. 220. Another loophole which takes JOM money away from Indian students.

Some suggestions for an alternative bill on Indian education.

1. Should include appeal power for tribes or individual Indians.

2. Broader definition of Indian to include terminated and non-trust land (landless) Indians.

3. Two alternatives for type of funding - by grants or by contract - with equalization of distribution to the following:

   a. Indian tribes
   b. Inter-tribal groups
   c. Indian non-profit organizations
   d. Indian controlled schools
   e. Federally supported Indian schools -- provided programs were planned and requested by a parent group which had control of funds and evaluated the program.

4. Require an education plan - goals, processes, implementaion, etc.

5. Programs would be decided on the basis of educational needs as identified by the Indians.

6. Provision for Technical Assistance in areas needed. Some possible areas of need - program writing, needs assessment, school boards, implementation of programs, evaluation

7. Para-professional training, pre-service, in-service, etc.

8. Limit on amount to be used for administrative costs.

9. Fiscal accountability system

10. School construction and renovation under the control of Indians

Part A of S. 1017 as amended by Staff

The purpose of Part A is to provide a formula, fair to all states, which can be the basis for distribution of Federal funds for the education of Federally recognized Indian children in the public schools of the states.

In addition, the bill would provide funds for a variety of special programs designed to meet the special needs of Indian pupils in public schools.

STEP I. A fair tax rate is to be levied on all taxable property within the Indian-affected district. This rate is determined by averaging the property tax rates of five non Indian districts of comparable sized enrollment.

Example - Average tax rate of comparable districts is 40 mills (or $4 per $1000 evaluation). Therefore, the property tax on the property in the Indian-affected district would be 40 mills. The 40 mills in the five comparable districts would obviously bring much more dollars than the 40 mills in the Indian district, which has much tax exempt property. If the Indian district receives P.L. 874 funds, this is counted as local tax revenue.

STEP II. State aid in an amount equal to the average provided for the pupils in the five comparable districts shall be provided for each Indian child in the Indian district.

STEP III. The difference between the amounts raised by Steps I and II for the five comparable districts and that raised by Steps I and II for the Indian district will be made up by the Federal funds provided in S. 1017.

Example -

Average tax rate of 5 comp. districts	Indian district
40 mills	40 mills
(generates $350 per child)	(generates $50 per child)
State aid average $450 per child	State aid $450 per child
$350	$ 50
$450	$450
$800	$500
	+ $300 - S. 1017 funds
-- difference to be made up by Federal funds, $300 per Indian child.	$800

In addition, funds will be provided for special programs such as guidance counseling, curriculum materials, development and production, school nurses, etc.

MICHAEL P. GROSS
ATTORNEY AT LAW
424 CAMINO DEL MONTE SOL
SANTA FE, NEW MEXICO 87501

TELEPHONE: 505-983-1373

RECEIVED
MAR 30 1973
CICSB, INC.

March 27, 1973

MEMORANDUM

To: Gerald Clifford Director
From: Legal consultant MPG.
Subject: Jackson Bill of 1973

You have asked for an opinion regarding proposed legislation by Senator Jackson, "Indian Self-Determination and Educational Reform Act of 1973," dated January 29, 1973.

In my belief, though well-intentioned, the provisions of this bill would work to entrench and strengthen present systems for educating Indians rather than reform them. This is so because the overall impact of the bill would be to:

1. Place increased discretionary power in HEW and the Interior Department (the Federal Government) over Indian education when such power, to be true to the principle of self-determination, should rest with Indians.

2. Place even more control over Indian education in the hands of state educational agencies or subdivisions.

The key phrases of the bill in this regard are:

"Sec. 102. The Secretary of the Interior is authorized, in his cretion and upon the request of any Indian tribe, to enter into a contract or contracts..."

"Sec. 103. The Secretary of Health, Education and Welfare is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts..."

"Sec. 202. For the purpose of providing education to Indians enrolled in the public schools of any State, the Secretary is authorized to enter into contracts with any such State or political subdivision thereof..."

The reason why this language will have the effect predicted rests on the reality of Indian education dynamics. These include the following points:

1. The Department of the Interior is controlled or heavily influenced in Indian affairs not by grassroots Indians but by Area Offices whose interest in self-preservation is best promoted by opposing and undermining the Federal policy of Indian self-determination. It must be recognized that the Bureau of Indian Affair's infra-structure has an interest diametrically opposed to Indian self-determination, for the latter will inevitably mean

placing administration of Indian programs in Indian hands, thus making the BIA's overblown bureaucracy largely superfluous. The wording of this bill, which does nothing to re-structure the BIA, is likely, therefore, to insure that the "discretion" exercised by the Secretary of Interior will not undermine the continued influence of the BIA infra-structure, largely concentrated in the Area Offices. It will thus ultimately be ineffective in implementing Indian self-determination because of the conflict between preservation of the bureaucracy and the interests of Indians. (That such can be expected from the present wording of the bill is attested to by the current struggle between Indian-controlled schools to win the right to deal directly with the BIA Central Office and the Area Offices determined to prevent them from doing so; the sad story of Oyate in which an area director teamed with a tribal politician to gut a successful educational program run by Indians; and the snail's pace towards contracting for Indian education under existing Johnson O'Malley authority, 25 USC 452 et. seq., which would be largely duplicated by this bill.)

2. In similar fashion HEW is heavily influenced by interests not necessarily congenial with Indian interests, the Educational Establishment, an assortment of professional educators and educational suppliers which have a very definite interest in preventing local control. HEW, more so than Interior, suffers from a fundamental misconception of Indians, promoted in part by the Educational Establishment, which has led to a heavy-handed anti-local control policy, ostensibly based on the theory that Indian control of Indian education violates the integration rule of Brown v. Board of Education. (See, North Dakota Law Review, vol. ___, pp. ___, March 1973, M.P. Cross: Indian Control for Quality Indian Education; and Michigan Law Review, vol. 68, pages 1355 et. seq., June 1970, Community Control, Public Policy and the Limits of Law, David L. Kirp, for arguments refuting this point of view.)

The result of trying to implement Indian self-determination through the Secretaries' "discretion" is likely to produce precisely the opposite of that intended. Instead of giving Indians true control over their lives, the language quoted in the bill will probably serve to pre-empt the self-determination policy by giving hostile elements in the Federal government control over the pace and characteristics of its implementation.

In this way the "discretion" which a benevolent and like-minded Federal bureaucracy might use to strengthen the effort towards Indian self-determination, gets twisted around. Plain and simple there is no guarantee either Secretary would make vigorous use of his new power to produce meaningful educational reform for Indians. (The word new is underscored because much of the power ostensibly conferred for the first time in this bill is already present, at least for the Secretary of Interior, in the Johnson O'Malley Act, supra, without having produced a determined effort by the BIA to self-determination in education.)

The conclusion is inescapable that Indian self-determination in education will not come about until Indians, not the Federal Government, are able to dictate the pace and characteristics of its implementation. Indian control of Indian education will be a myth until Indians have an automatic right upon their own discretion to take over schools and programs educating their children. It is significant that in the entire bill the word "control" does

appear only twice, both times in the preamble. (The word "controlled" appears in the definition of "tribal organization".)

You can't have it both ways: meaningful Indian participation, involvement and control in education while ultimate control remains in the Secretaries of HEW and Interior, given their built-in constituencies, and in State educational agencies or local school districts.

Detailed Analysis:

These additional aspects of the bill either reinforce the contentions above or present different problems:

1. Sec. 4(a) definition of Indian leaves out terminated tribes and members thereof, a serious gap in any bill seeking to deal comprehensively with Indian education.

2. Sec. 4(c) definition of "tribal organization" does not clearly state that Indian-controlled, private organizations are eligible for funds under the bill. This too is a serious gap since many if not most of the present Indian-controlled schools (Rough Rock, Ramah, and Wind River, for example) are run by private Indian school boards. Only if private Indian institutions are made explicitly eligible can adequate provision be made for essential emphasis on the rights of parents and communities to control their children's educations.

3. There is no provision in the bill for handling the thorny question of civil service regulations and Indian take-over. A major obstacle to Indian control of Federally-funded schools has been the inability of the Federal Government to come up with a meaningful formula to protect the rights of Federal civil servants and Indians seeking to control their own schools. New legislation could provide a formula, for example, by suspending civil service regulations in these projects and providing for compensation for any displaced civil servants.

4. Sec. 204(c) reinforces a most debilitating aspect of current contracting, the heavy-handed imposition of Federal procurement procedures. These procedures are suitable to purchase of paper clips and pencils but not to educational services from Indians. They should be suspended for all contracts under the bill.

5. Sec. 202 repeals the Johnson O'Malley Law, supra, without adequate justification. (In my view, Johnson O'Malley provides ample authority for an enlightened Federal Indian education policy and program - provided procurement procedures are suspended for it - but it has not been fully implemented.)

6. Sec. 203(b) is an example of the use of nice-sounding phrases to accomplish nothing. What possible meaningful role could a statewide "Indian Advisory Council on Education" play? It is more likely to be a rubber-stamp for the state education agency than a sounding board for Indian views on education. The use of the word "Advisory" merely underscores the overall tenor of the bill, which generally reinforces non-Indian control

of Indian education.

7. Sec. 203(a)(4)(H) - "Such other educational programs as may be mutually agreed to by the Secretary and the contractor" - creates a loophole through which the spectre of supplanting (the practice of using Indian education funds in lieu of local and state funds) can fit. It should be eliminated or reworded to allow for other programs only insofar as they relate to the special educational needs of Indian children.

8. The bill will presumably, given its wording, provide as much assistance to non-Indian controlled educational institutions as for Indians:

(a) Sec. 203(c) mandates contracts (the only mandatory contracts in the whole bill) with state education agencies affected by contracts under section 202;

(b) Sec. 205(a) provides grants to "institutions of higher education" which have often secured money for the benefit of Indians without providing real service to Indians;

(c) Sec. 213(a) authorizes grants or contracts with "universities and colleges and other public and private nonprofit agencies, institutions and institutions, and to individuals for research..."

In short this bill would repeal Johnson O'Malley without substituting a real mechanism for reforming Federal or State education for Indians. Its major effect would be to reinforce a basic passive-active dichotomy between Indians and state or Federal bureaucracies. Under its provisions, Indians would still lack a <u>right</u> to control their own schools or educational programs. They would still have to persuade a Federal official to give them money to educate their children and, if successful in doing so, they would still have to use the money in restrictive ways mandated by Federal contracting procedures (except for negotiations without advertising.)

Here are some specific recommendations for strengthening the bill:

1. Preamble: Congressional Findings:
-should include recognition of crucial <u>educational</u> importance of parental and community control;

2. Preamble: Declaration of Policy:
-should include a statement underlining and supporting the right of Indian parents and communities to control the upbringing of their children;

3. Definitions:
-should expand the definition of "Indian" to include members of terminated tribes;
-should clarify the status of privately-controlled Indian organizations as recipients of funds;

4. Sec. 102 should be made mandatory. Suggested wording:

"The Secretary of the Interior is authorized and <u>directed</u>, upon the request of any Indian tribe or organization supported by a majority of the Indian community affected, to enter into a contract or contracts..."

5. Sec. 103 should be strengthened in the same way.

6. Sec. 105: add additional section:

"(d). The Secretary is authorized, where appropriate, to suspend the regulations of (civil service laws) to implement the policy of this Act, provided any civil servant displaced by a contract or contracts hereunder be adequately compensated by the Federal Government. For the purpose of such compensation, an amount of $_____ is authorized to be appropriated for the first fiscal year after enactment of this Act, and $_____for each of the next two succeeding fiscal years."

7. Sec. 106(a) should be entirely reworded to exempt contracts under the Act from constrictive Federal procurement laws and procedures in addition to the negotiation aspect.

8. Title II, sec. 202, should be rewritten to prevent bilateral relationships between states and the Federal Government in Indian education. All Federal funds for Indian education in public school should be funneled through Indian tribes or organizations which may then contract with states if they wish. (If they do not, they should be permitted to use the funds in their own schools.) Suggested wording:

"Sec. 202. For the purpose of providing education to Indians enrolled in the public schools of any state, the Secretary is authorized to enter into contracts with any Indian tribe or tribal organization residing in any such state which in turn may contract with the state or political subdivision thereof upon such terms and conditions as are mutually agreed upon. If a tribe or Indian organization does not wish to contract in this manner with any state agency or subdivision it may use the funds in its own schools under the provisions of Sec. 102."

9. In addition Title II should be strengthened by including a discretionary power in the Secretary to order the redistricting of state school district boundaries to provide for increased Indian control where all other efforts for reform have proven fruitless and he considers conditions of discrimination and unequal educational opportunities for Indians to be endemic or inherent. This remedy could be considered extraordinary upon the same basis that withholding of Federal funds under 42 USC 2000d, et. seq. and 45 CFR Part 80 is.

10. Sec 205(a) contracts should go only to Indian tribes, organizations or other institutions approved in writing by them. The same applies to sec. 213(a).

11. Sec. 203(c) contracts should be made discretionary.

conclusion:

The Jackson Bill of 1973 is weak. Yet with the changes suggested above it could become a significant vehicle for reform of Indian education.

TESTIMONY

Before the

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

SUBCOMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

June 18, 1973

on S. 1017, Indian Self-Determination and Educational Reform Act of 1973

By

Dillon Platero, Director

Navajo Division of Education

Navajo Nation

Window Rock, Arizona 86515

Statement of Dillon Platero, Director, Navajo Divison of Education, Navajo Nation, Window Rock, Arizona Re: S.1017

Chairman Abourezk and Distinguished Members of the Subcommittee:

On behalf of the Navajo Division of Education, I express to you sincere gratitude for the opportunity to testify before you on Senate Bill 1017, which, if enacted, will become the "Indian Self-Determination and Reform Act of 1973."

The Navajo Tribe is vitally concerned over enactment of any legislation that seeks to assure Indians more control over their own lives. Since S. 1017 is a lengthy Bill, I will proceed with an analysis of the Bill with comments and recommendations on specific sections, as we do not wholly agree with the contents of the Bill in its present form.

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. The Secretary of the Interior is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended, and parts A and D of title II of this Act, and any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. The Secretary of Health, Education and Welfare is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organizations of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. The Secretaries of the Interior and of Health, Education and Welfare are each authorized, upon the request of any Indian tribe, to make a grant or grants to any tribal organization of any such Indian tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such tribal organization to enter into contract or contracts pursuant to sections 102 and 103 of this Act.

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COMMENTS:

(1) The major concern is that under Title I, Section 102 and 103, nothing is specifically provided as per funding. Authority is granted to Interior and HEW to contract with tribes to run various programs, but the sections do not specifically state that the Federal Government will continue to provide the funds for the programs. There are implications throughout the Bill that the Federal Government will fund, but nothing, such as in Section 104 relating to preparatory actions, specifically so stating.

ADMINISTRATIVE PROVISIONS

SEC. 106. (d) The appropriate Secretary may, in his discretion, enter into contracts pursuant to sections 102 and 103 of this Act with tribal organizations, by negotiation, without advertising, for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items: Provided, that nothing in this title shall be construed as authorizing or requiring a tribal organization to enter into an agreement, directly or indirectly, with a non-Indian party of the construction of buildings, roads, sidewalks, sewers, mains, or similar items without compliance with requirements of advertising and competitive bidding if the same would have been required had the agreement with the non-Indian party been entered into directly by the United States.

COMMENTS:

Section 106 (d) provides for contracting of construction, repair, etc., but again nothing is specifically stated concerning the source of funding.

RECOMMENDATION:

Source of funding and timetable should be specified for clarification.

SEC. 107. The Secretaries of the Interior and of Health, Education and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this title.

COMMENT:

Meaningful input from Indian Tribes and organizations in the initial stages of planning rules and regulations is lacking.

RECOMMENDATION:

Meaningful input be solicited from Indian Tribes and organizations in the initial stages, as well as throughout the entire planning and implementation phases.

TITLE II THE INDIAN EDUCATIONAL REFORM ACT OF 1973

Part A - Education of Indians in Public Schools

SEC. 202. For the purpose of providing education to Indians enrolled in the public schools of any State, the Secretary is authorized to enter into contracts with any such State or political sub-division thereof, or with any Indian tribe or tribal organization residing in any such State (such State, political sub-division, Indian tribe, or tribal organization to be hereinafter referred to as "contractor"): Provided, that, in the event the contractor is an Indian tribe or tribal organization which resides in more than one State and the Secretary wishes to contract with such tribe or tribal organization to provide education to

Indians enrolled in the public schools of more than one State, separate contracts shall be negotiated with such tribe or tribal organization for each such affected State.

COMMENT:

Title I provides for a substantial number of authorized programs, however, there is nothing in the Bill that would indicate that funds appropriated under this bill are to be utilized exclusively for Indian children. This gap may or may not be filled by the requirement for submitting education plans and participation of "Parent Committees."

Allows not only Indian tribes to contract but opens the door to any state to contract without any Indian preference stated in the contract thus allowing for Indian communities to compete with State and State Political Subdivisions.

In addition, this section does not provide for a means of exact accounting.

RECOMMENDATION:

Provisions be made to include preference in contracting for Indian tribe and tribal organization; that some form of exact accounting procedures be developed; that the Indian preference clause (Provisions of the Civil Rights Act Title VII) be recognized and adhered to in the hiring practices of contractors; and also that the Buy-Indian Act (25 USCA 47) be adhered to in letting of contracts under this section.

SEC. 203. (1) All taxable property within each school dis-

trict affected by any such proposed contract is taxed at a rate equal to the average property tax rate in the five most comparable school districts in such State which are not eligible for assistance under Part A of this title.

COMMENT

".....in the five most comparable school districts in such State which....." This section is very unclear as to the comparability of school district. By what measures is a district to be compared.

RECOMMENDATION:

".....five most comparable school districts....." be clarified as to what is meant by comparability.

SEC. 203 (a) (5). (5) Additional funds provided under any contract pursuant to section 202 shall be utilized by the contractor so as to provide Indians enrolled in schools of any affected district with such programs as:

(A) Guidance and counseling services for Indian students in grades 5-12 at a ratio of not less than one counselor for every fifty Indian students;

(B) curriculum development programs, including production of special bilingual and bicultural materials, to meet the needs of Indian students;

(C) teacher aides (bilingual where appropriate) at a ratio of one per twenty Indian students in grades kindergarten through six, and one per thirty Indian students in grades seven through twelve;

(D) supplemental school lunch and school breakfast funds for Indians

as needed, provided there is evidence of need, beyond assistance otherwise provided by law;

(E) school nursing services for Indians provided such services are coordinated with the Indian Health Service of the Public Health Service;

(F) summer school programs for Indians, including academic as well as recreational, remedial, and cultural and academic enrichment components, if desired by the Indian community; and

(G) such other educational programs as may be mutually agreed to by the Secretary and the contractor.

COMMENT:

Presently many states' JOM programs provide parental cost items. These items help the student to participate more fully in the regular school program and the extra-curricula program. Items such as school pictures, tennis shoes, tests (ACT) where fees are required of students could be provided for the Navajo students who come from economically deprived homes. There is no question that these items are needed and wanted but cannot be afforded by the students and their parents.

We believe that school pictures of individual students are essential toward the development of self-image, general attitude, and the feeling of being an important part of a program. To be left out completely because of lack of funds creates feelings of inadequacy and failure.

Possessing a pair of tennis shoes makes the difference between participation in physical education classes and sports, or foregoing these events because of lack of funds to buy the

bare necessities for class.

Tests (ACT) are administered at schools to determine eligibility for consideration toward a college career. Such tests are paid for by individual students. Lack of funds can deter a student from developing any interest in a future career and ending up dependent upon others to do his thinking.

Many other incidentals can be mentioned that cause problems in the school programs when they cost the student money and when he comes from an economically deprived home.

RECOMMENDATION:

Include provision for parental cost item in addition to what is listed under A-G

SEC. 203 (a) (7). An amount equal to not more than 3 per centum of any funds provided to the contractor under any contract pursuant to Part A of this title shall be available to the contractor for administrative and consultative costs in carrying out such contract.

COMMENT:

3% is not considered sufficient to plan, monitor or evaluate an effective program but there is a need to regulate administrative overhead. Clearly, the 3% administration allowance is insufficient and such a low amount can either scare off "prospective contractors," or result in shoddily administered programs.

RECOMMENDATION:

Provision of a more reasonable administrative overhead ranging from 5-8%.

SEC. 203 (b) (9). Such Advisory Council shall have the opportunity to advise and make recommendations on the development of other programs provided for in this title.

COMMENT:

Again Indian Committees are placed in an advisory and recommendation position without any real clout or sign-off authority. The working relationship in this type of situation will depend fully on the receptiveness or non-receptiveness by the State.

Nor does this section set up any set of democratic procedure for selection of Advisory Council members.

RECOMMENDATION:

In order to carry out the stated objectives of this bill--promote Indian participation, encourage development of Indian human resources, etc.--then Indians must be given a meaningful role, with authority and full participation in programs concerning their children.

SEC. 203 B (9) (4). (4) On or before July 1 of each year, such Advisory Council shall submit to the Secretary, in such form and manner as he shall prescribe, a report evaluating the progress achieved in education of Indians in such State under programs provided for in this title.

COMMENT:

This section does not provide for feedback from the Secretary to the Advisory Council.

RECOMMENDATION:

Provision be included whereby the Secretary is required to react in writing to the contents of the report as submitted by the Advisory Council.

SEC. 204 (a). There are authorized to be appropriated for the first fiscal year after the enactment of this Act, and for each succeeding fiscal year, such sums as may be necessary to carry out the provisions of this Part A.

COMMENT:

Currently, there is no broad accounting or accountability of program procedures set up in the BIA to make rationale decision about annual sums needed for JOM program.

RECOMMENDATION:

Provision must be made to design an exact accounting process for the Department of the Interior to follow in its determination of sums needed for this section.

PART B DEVELOPMENT OF PROFESSIONALS IN INDIAN EDUCATION

SEC. 206. (a) The Secretary is authorized to establish and carry out a program of making grants to, and contracts with, institutions of higher education and other public or private nonprofit organizations or agencies with relevant experience and expertise in order to provide fellowships and carry out programs and projects to...

COMMENT:

In order to carry out the objectives of this bill to its

fullest extent, then Indian organizations and Indian tribes must be allowed to participate in the training of professionals in Indian education. Precedent in this area has already been set by the Navajo Tribe and by the Navajo Education Association (Dine Biolta Association).

RECOMMENDATION:

Insert the following underlined words: "...institutions of higher education and other public or non-profit organization, Indian Tribes, Indian Organizations, or agencies with relevant experience..."

SEC. 206. (c). No grant or contract shall be authorized under this section which does not provide for evaluation pursuant to criteria determined by the Secretary.

COMMENT:

Again this section does not promote maximum Indian participation and Indian self-determination when statements such as, ".....pursuant to criteria determined by the Secretary," are made disregarding any participation by Indian people.

RECOMMENDATION:

Provision must be made for a joint effort of the Indian tribes and organizations and the Secretary to provide for evaluation criteria as mentioned in this section.

PART C SCHOOL CONSTRUCTION

SEC. 208 (a). The Secretary is authorized to enter into a contract or contracts with any State education agency or school district

for the purpose of assisting such agency or district in the acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian Reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

COMMENT:

This section does not include provisions for Indian tribes, or Indian organizations to participate fully; nor does it include provision for Indian labor or Indian contracting.

RECOMMENDATION:

Insert after "State Education Agency," the words, "Indian Tribe or school district..." It is further recommended that Indian preference clause, (Provision of the Civil Rights Act, Title VII) be recognized and adhered to in the hiring practice of contractors, and also that the Buy-Indian Act (25 USCA 47) be adhered to in letting of contracts under this section.

SEC. 208 (c). The Secretary shall consult with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by contracts entered into pursuant to this Part C. Such consultation shall be advisory to, and not binding upon, the Secretary, but shall occur prior to the entering into of any such contract.

COMMENT:

This section does not allow for sign-off. Indian tribes and committees are placed in advisory and consultation status.

The relationship again is completely one-sided and dependent upon the receptiveness of the agents of the Secretary.

RECOMMENDATION:

Provision ought to be made whereby the Secretary's decision must reflect recommendations obtained in consultation with Indian tribes.

PART D YOUTH INTERN PROGRAM

SEC. 210 (c). The Secretary shall require negotiations with employers for the employment of each Indian youth participating in the Indian youth intern program, such negotiations to include a job description outlining specific duties, evaluation of the progress of the Indian youth intern, and formal consultation by the employer with the Indian youth intern at least once every two weeks.

COMMENT:

Finally, the Youth Intern provisions in Part D, while excellent in theory and of great use, are hardly "self-determination" provisions. There is no provision for Tribal participation. These provisions can and should be expanded to allow grants to tribes to administer their own Youth Intern programs.

This section completely excludes any mention of Indian participation in establishing, planning, implementing, monitoring or evaluating. This section parallels what has been the policy of Indian Education in the BIA in past years resulting in programs and policies affecting Navajo students being planned and designed in Washington by persons unfamiliar with the needs of Navajo students.

Historically, Indian parents with children in Federal Schools have never been afforded the joys of full participation in the education of their children. Decisions for parents concerning planning and program evaluation have all been the duty and responsibility of the agents for the Secretary.

PART E-EDUCATIONAL RESEARCH AND DEVELOPMENT

SEC. 214 (a). The Secretary is authorized to make grants to and contracts with universities and colleges and other public and private non-profit agencies, institutions, and organization, and to and with individuals for research, surveys, and demonstrations in the field of Indian education and for the dissemination of information derived from such research, surveys, and demonstrations.

COMMENT:

Educational Research and Development is a very important facet of Indian education, but if relevant Indian education research is to be accomplished and if this Bill is truly an Indian Self-Determination Bill, then preference in grants and contracts must be given to Indian Tribes, Indian Education organizations, and Indian non-profit agencies to research and survey in the field of Indian education.

RECOMMENDATION:

Objectives set out in this Bill to effect Indian self-determination should include allowances for meaningful Indian input in every area including educational research and development.

PART F ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

SEC. 216. The Secretary, after consultation with persons competent in the appropriate field of education, which persons shall include Indians who are not employees of the Federal Government, shall present to the Ninety-Fourth Congress, within sixty days of the convening thereof.....

COMMENT:

Programs again do not reflect any real authoritative role for the Indian communities or tribes affected. The authority for program design remains, as it always has, with the Department of the Interior.

RECOMMENDATION:

Provision should be made to include full participation of Indian communities and tribes affected in all phases of planning, implementation and evaluation.

SEC. 216 (5). A review and analysis of existing programs in higher education for Indians administered by the Department of the Interior, and a proposed program of higher education designed to meet the needs of the Indian people.

COMMENT:

This section outlines an in-house evaluation of existing Indian higher education programs, which would pose a question as to the validity and reliability of such an evaluation.

RECOMMENDATION:

Provision be made for an outside agency (preferably Indian)

to do the evaluation.

PART G GENERAL PROVISIONS

SEC. 220. In the event that Indian students comprise the majority of any class or school assisted by this title, non-Indian students enrolled in the class or school may participate in programs funded by this title: Provided that such participation is approved by the local public school board if such board is composed of a majority of Indians or the community education committee established pursuant to section 203 (a) (6) and by the parents of the non-Indian children: And provide further, that such non-Indian children are not counted for the purpose of section 203 of this Act.

COMMENT:

This section in fact authorizes use of the funds for non-Indian students when "the majority of any class or school" is comprised of Indian students. Although this is probably an equitable and administratively necessary provision, it seems to open the gate for general academic use of funds, especially the words relating to a majority of Indian students in any class. This would seem to allow schools to "stack" certain classes with Indian students, regardless of the overall enrollment, and then utilize, legally, the funds for general purposes.

There must be far stricter limitations on the use of the funds exclusively for the benefit of Indian students, who are after all, bringing in the money.

RECOMMENDATION:

Provision be made that at least 2/3 of the enrollment of a class funded by this act be Indian students.

Statement Regarding "Title II--The Indian Educational Reform Act of 1973" of Senate Bill 1017

Submitted by

El Paso Natural Gas Company

to the

Subcommittee on Indian Affairs of the Interior and Insular Affairs Committee of the United States Senate

June 18, 1973

El Paso Natural Gas Company ("El Paso") is a natural gas transmission company serving customers in eleven western states in which several Indian reservations are located. Company facilities on such reservations represent a substantial investment which furnish the basis for significant local tax payments.

The "Indian Educational Reform Act of 1973" ("Act"), if enacted, will introduce many needed changes in providing for the education of Indians, and for the most part does so in an acceptable manner. However, portions of the Act are troublesome to El Paso as a taxpayer of large amounts of taxes which become a part of the total funds available for the education of Indian children.

An essential objective of previous Indian education programs undertaken by the federal government has been to provide for the unmet financial needs of the school districts. This is evidenced by Part 33

of Subchapter E, Chapter I, Title 25 of the Code of Federal Regulations entitled "Enrollment of Indians in Public Schools" which provides in part as follows:

> "§33.4(b) The program will be administered to accommodate unmet financial needs of school districts related to the presence of large blocks of nontaxable Indian-owned property in the district and relatively large numbers of Indian children which create situations which local funds are inadequate to meet. This Federal assistance program shall be based on the need of the district for supplemental funds to maintain an adequate school after evidence of reasonable tax effort and receipt of all other aids to the district without reflection on the status of Indian children."

In addition, Chapter 2 of the Bureau of Indian Affairs' 1970 Report to Congress, "Administration of Program for Aid to Public School Education of Indian Children Being Improved," B-161468, provides in part:

> "We believe that the Bureau should apply its basic concept of the JOM program uniformly and should provide assistance under that program on a supplemental-financial-need basis. Providing assistance on that basis would reduce the amount of Federal assistance to the extent that State, counties, and school districts are able to pay the cost of educating Indian children from reservation homes without creating an undue financial hardship on local taxpayers." (Emphasis added)

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As is recognized in previous programs, and the present Act as well, the federal government should make available the funds necessary to provide an adequate Indian educational program, but only after the state and local taxpayers have assumed their reasonable portion of the burden. Although it seems clear that the intent is to make federal funds available to fill the total unmet needs of the program after giving consideration to state and local taxpayer obligations, it is believed that certain changes would make the meaning absolutely clear and thus provide for a fair and reasonable distribution of the financial burden among those responsible. It is important then to provide a workable formula for determining the local taxpayer effort to ensure that the taxes required are reasonable. The Act as it now reads does not adequately protect the local taxpayer.

Section 203 provides generally that to be acceptable an education plan must assure, inter alia, that all taxable property in the affected school district is taxed at a rate equal to the average property tax rate in the "five most comparable school districts" which are not eligible for assistance under the Act.

It is submitted that by using the "five most comparable school districts" not entitled to these funds this provision is deficient. The determination of the "most comparable" school districts would be most difficult and could cause considerable disagreement among the parties. In addition, the use of only five school districts does not provide an adequate sampling for determining that a reasonable local tax effort is being made.

For the reasons stated, it is suggested that clause (1) of §203(a) be amended to provide that taxable property within each school district be taxed at a rate equal to the average property tax rate imposed for operational purposes in all school districts within the state which are not eligible for assistance. It is also believed that the tax rate used for comparison purposes should be without regard to that portion dedicated to payment of debt. Section 203(a)(1) would then read as follows:

> "(1) all taxable property within each school district affected by any such proposed contract is taxed at a rate equal to the average property tax rate, determined without regard to debt service, in all school districts in such state which are not eligible for assistance under part A of this title;"

This will provide not only a broad and therefore more equitable basis for determining local effort but will at the same time eliminate the problem of selecting the school districts to be used in determining the comparable tax rate.

Clause (3) of §203(a) provides that state and local payments to affected school districts shall not be less than the average of such payments made to five comparable school districts. Under various state laws, a state might be prohibited from making payments equal to such average. Should this occur, the Secretary would not be permitted under §203 to enter into a contract to provide funds under the Act. To eliminate this possibility, it is suggested that clause (3) be amended

to read as follows:

> "(3) Any affected school district shall receive all aid, including per capita payments of state and local education funds, which other similar school districts of the state are entitled to receive;"

This follows the precedent established in Regulations §33.5 (Part 33 of Subchapter E, Chapter I, Title 25, CFR).

Clause (4) presently provides that funds would first be used to supplement state and local funds but apparently only to the extent necessary to provide per pupil operational expenditures equal to the average of such expenditures of five comparable districts. This possible limitation on the use of the federal funds, which we believe to be inadvertent, creates a situation in Arizona that exposes local taxpayers to unreasonable tax rates. Arizona law does not provide for maximum tax rates but imposes limitations only on the amount that may be spent on certain types of budgeted expenditures. However, these limitations are ineffective because they may be exceeded by vote of the school district residents who are exempt from tax and thus personally unaffected by increased taxes. On the typical reservation in Arizona, business property is the major source of local tax revenues since most of the other property is exempt from taxation under the law. The owners of such business property have no vote or any authority to approve the school board's education plan.

An example might be helpful in understanding the gravity of this problem: In a particular school district, after reasonable local

effort and the application of all available funds, an operating budget equivalent to $400 per child is the most that can be financed by state and local efforts. Although the state average is $1,000 per pupil, the needs of this particular school district, because of its remote location and other unique demands, requires an operating budget for basic support equal to $1,500 per child. Under clause (4) as it presently reads, the first funds available under the Act would be used to provide additional operating funds of $600 per child ($1,000 minus $400). Neither clause (4) nor any of the other provisions of the Act permits the funds available under the Act to be used to fund the additional $500 required to furnish the Indian child an adequate education. The result would then be that this additional $500 per child must be provided by the local taxpayer through the imposition of unreasonable tax rates.

In order to accomplish the intended purpose of federal legislation to provide funds to cover the unmet financial needs of school districts where state and local funds are reasonable but inadequate, clause (4) should be amended to read:

"(4) funds provided under any contract pursuant to section 202 shall first be used, when added to funds generated by clauses (1) and (3), to provide operational, basic-support expenditures;"

In summary, this Act, as proposed to be amended, would provide an adequate educational program for Indian students based on the need determined by local school boards or Indian committees. It would provide funding on a fair and equitable basis. State aid would be

distributed in the same manner as in all other districts of the state. The local taxpayer would be taxed at the average state rate with the federal obligation providing the necessary funds for the needs unmet by state and local sources.

TESTIMONY OF PETER MACDONALD, CHAIRMAN, NAVAJO NATION, ON TITLE I OF S. 1017, THE INDIAN SELF-DETERMINATION ACT BEFORE SENATE SUB-COMMITTEE ON INDIAN AFFAIRS OF THE SENATE INTERIOR COMMITTEE, JUNE, 1973

Since the historic shift in Federal Indian policy heralded by the President's July 1970 Indian message, there has been considerable talk on the part of all concerned about the new policy of "self-determination without termination". Although few would challenge that there has been in fact a shift in Federal Indian policy, there is considerable disagreement as to what the changes are and how much they will benefit or harm the interest of the American Indian in the long range. There are many within my own Tribe, within the Navajo Tribal Council, as well as in other Tribes across the nation who believe that the new policy represents at best more government rhetoric without substance, and at worst, a new wave of "termination policies" in the guise of "self-determination". These feelings of suspiciousness result from recollections of past policies which under the guise of helping the Indian, wreaked havoc and human misery upon our peoples for years to come. It is my belief that because the government's new policy of "self-determination without termination" has not been adequately defined by anyone--the President, the Congress or the BIA since the President's speech of July 1970, the vagueness of this policy feeds the fears and suspicions of many who have known the miseries which have resulted from the Termination policies of the past. Insofar as S. 1017 attempts to define the new policy and attempts to establish administrative mechanisms to assure its implementation, it is helpful and we support it as necessary and crucial. However, we find S. 1017 itself to be vague and ill defined in certain

respects and respectfully requests that the Committee and the Congress give the following points due consideration in acting upon this Bill so crucial to the interests of Indian Tribes.

Although S. 1017 sets forth broad policies and definitions in an attempt to define the meaning of "self-determination", it is our belief that it falls far short of the kind of definition which must exist in the long run if the goals of this Bill are to be accomplished. Indeed, it is our belief that the full implications and ramifications of a policy of consultation and self-determination are not fully perceived by anyone at this point in time, including the Indian Tribes themselves. Nor do we consider the matter one which lends itself to ready definition and explication. Rather, in our view, a period of careful study, analysis and consultation is required to adequately explore the full implications and alternative meanings of the new policy. We therefore recommend that the Bill require the BIA, in consultation with and with the approval of the Indian Tribes, develop a formal self-determination policy spelling out the full implications of self-determination.

In addition such a study should spell out procedures for implementing the policy including the respective roles of the Tribes and the BIA in implementing the policy, a specific timetable and a projected budget for implementing the policy, the latter realistically reflecting each detail of the implementation plan. Such a study should be conducted during FY 74 with the BIA and the Indian Tribes jointly submitting a report and recommendations to the Congress by June 30, 1974.

If indeed the new policy is to effect a major positive shift in U.S. Indian policy, the critical process of defining the policy

and developing an implementation plan should not be left to follow the course of other "routine" policy and administrative matters handled on an on-going basis within the bureaucracy. Rather, this process should be accorded the status and importance to which it is due by designating an individual within the BIA whose sole responsibility shall be to oversee the development of a plan for implementing the policy, a coordinator of self-determination. Such an individual should be responsible directly to the Assistant Secretary or Commissioner and should be selected in consultation with the Indian Tribes. In addition, the Bill should provide other personnel adequate to carry out the complicated job of defining the new policy and assuring adequate consultation with the Tribes in the process. There should be at least one individual designated for each BIA Area Office who would be responsible for working with each of Tribes in defining the policy. Such individuals should be directly responsible to the proposed Coordinator of Self-Determination and should have no other responsibilities. Upon formulation, and adoption of a specific "Self-Determination Plan", the National and Area Office Coordinators could then function as "ombudsmen" to assure full and effective implementation of the plan and policies at all levels within the BIA structure.

In conjunction with the development of the proposed National Self-Determination Plan, the BIA/IHS should be required to include in such a Plan to Congress proposed provisions for disposition of its own administrative personnel and resources coincident with contracting programs and other administrative responsibilities to the Tribes. Presumably, as the Tribes assume more responsi-

bility for managing their own affairs, BIA/IHS administrative structures and resources should reflect increased Tribal capability and responsibility. However, if the new policy of self-determination is not to become a policy of termination in fact, the Plan should state in the clearest terms what relationship BIA/IHS will have with the Tribes on both a short range and long range basis. This point is probably the single most crucial consideration in assuring that self-determination does not become termination and in gaining Tribal acceptance of the new policy. I cannot be too emphatic in expressing our concerns regarding this issue.

In this regard, we recommend that Section 109 of the Bill be amended as follows: "Nothing in this title shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people or in penalizing the Indian people for this policy of self-determination through the reduction of program funds to cover additional costs coincident with the development and implementation of a policy of self-determination, including specifically the contracting provisions of this title."

In providing the BIA with a mandate for defining, in consultation with the Tribes, a policy of self-determination, the Bill should demonstrate a sensitivity to the need for flexible and responsive definitions of self-determination which reflect a respect for the differences in culture, tradition, Tribal governmental structure, economic situation, and a Tribe's inherent right to choose its own destiny. Thus, no one definition of self-determination could fit the situation, needs and desires of all

Tribes. For some Tribes, contracting the full administration of all service programs on their reservation might be the most realistic approach to self-determination. For another, full participation in the planning and evaluation process might better serve their needs and interests than being burdened with the full responsibility for administering service programs. For other Tribes, a mix of the two might be most suitable, and for others, conceivably, a retention of the status quo might be more to their liking. There are a number of other possibilities, some yet to be conceived.

Too often, "contracting" has become synonymous with "self-determination". We feel that the Bill should reflect an awareness of the distinction between contracting as one vehicle for self-determination as opposed to being an end in itself and/or synonymous with "self-determination". If "self-determination" is to mean no more than contracting, then very probably those who fear the new policy as "termination" in disguise have much to fear, and those of us who do not share that fear are naive in the extreme. Rather, the definition of self-determination should focus as much on the process through which a Tribe will determine its own destiny as much as on "concrete" goals. And, if Indian Tribes and Indian people are to know that the new policy is not a subtle long range plan to eventually terminate the relationship between the Tribes and the Federal Government (BIA/IHS), such a process should, at all points along the way, not only detail the role and functions of the BIA (IHS) and the Tribes separately, but should also reflect the joint relationship which will evolve and continue to change in the formulation of a new joint relation-

ship between the Tribes and the Federal Government (BIA/IHS).

Relatedly, the Bill should reflect a recognition of the need for an extensive preparation and tool up period for Tribes in gearing themselves for the new responsibilities imposed by a real self-determination policy and for contracting the administration of various programs. Each Tribe should be given a planning grant which will enable the Tribe, among other things, to conduct comprehensive evaluations of all on-going programs on the Reservation to determine their relative adequacy in meeting Tribal needs, goals and objectives, to redesign programs to meet Tribal goals and objectives, to determine what requirements the Tribe will face in assuming administrative responsibility for programs (e.g. staff training, new curriculum materials, etc.), and to assess the overall capacity of the Tibe to assume administrative responsibility for various functions currently carried out by the BIA/IHS.

In addition to allowing adequate time for a planning process, evaluation and tool-up coincident with the development of an individual Tribal self-determination plan, recognition should be made at the outset that the cost of contracted programs will likely increase (as compared with BIA/IHS projections of what the cost "should" be) during the initial two to three years of Tribal administration. This anticipated increase in cost will result from several factors: BIA/IHS estimates of the cost of Tribal administration of programs currently operated by BIA/IHS, at best, are spurious and are based on a set of false assumptions. Their cost projections assume no major shift in the design and operation of programs under Tribal administration. To the contrary,

the whole point of contracting from a Tribal point of view would be to redesign programs and services so as to be more responsive to the needs of Tribal members. Such redesign and reprogramming will require funds above and beyond current operating budgets of BIA/IHS. In addition, BIA/IHS cost figures are derived from line item budgets which do not reflect the substantial indirect subsidy of all such programs resulting from the existence of the larger BIA/IHS bureaucracy, reduced cost of government procurement procedures and quantity purchasing, planning apparatuses, fiscal and legal departments, etc. Most Tribes do not have the sophisticated administrative structures necessary to effectively administer contracted programs. Tribal administrative structures were originally developed to tend "housekeeping" functions for Tribal members, not to operate large scale programs of service. Time and resources will be required to develop administrative structures and procedures appropriate to the task and to meet the sometimes awesome burden of governmental fiscal and administrative regulations. In the past, the Tribes have usually had no recourse but to accept BIA/IHS cost projections for administering a contracted program. Yet, by accepting BIA/IHS cost estimates for operating programs (and usually the Tribes have no recourse other than to accept the BIA's figures), the Tribes are often "set up" for a situation which will result in cost over-runs and one in which the Tribes will be blamed for inefficiency , lack of administrative ability and other shortcomings. In this regard, it would be helpful if the Bill were to reflect a more definitive awareness of the technical difficulties incumbent

upon the Tribes in moving toward self-determination and in terms of being able to effectively develop and administer contracts. We cannot move from the paternalistic policies of the past which took from us our right and capacity to manage our own affairs to instant, efficient self-management. Such an expectation would be cynical and it is a suspicion of such cynicism which creates much of the distrust of the new self-determination policy.

One approach which could significantly aid Tribes in assuming administrative responsibility for programs and services currently operated by BIA/IHS would be the contracting of administrative costs to Tribes for a period fo time (e.g. 6 months) prior to Tribal assumption of full administrative authority under the contract. Although such a procedure would be initially costly, the advantages to utilizing a "shadow staff" technique for providing "on-the-job-training" to Tribal personnel would ultimately pay for itself in more efficient Tribal administration and program effectiveness.

We recommend strongly that the Bill state in unequivocal terms that both the BIA/IHS and the Tribes shall equally determine the specific terms of contracts. Too often in the past, the Tribes have been placed in a "take it or leave it" position.

In relation to the above, we recommend that the Bill specifically recognize the Tribes' need for technical assistance, including "outside" technical assistance, both in terms of preparing for self-determination and for developing and administering contracts. Funds should be specifically earmarked for this function and a technical assistance plan should be drawn up by each Tribe in

consultation with the BIA/IHS in conjunction with each Tribal self-determination plan. The Bill should enable the Tribes to seek their own technical assistance from whatever source they deem advisable and to contract directly with technical assistance resources. The BIA/IHS should be charged with developing guidelines to assist the Tribes in determining the types of technical assistance which will be required, probable cost of services, criteria for selection of technical assistance contractors, etc.

We recommend that Section 103 be amended to read as follows: "The Secretary of Health, Education and Welfare is authorized, in his discretion and upon the request of any Indian Tribe, to make a grant or grants to any Tribal organization of any such Indian Tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such Tribal organization to enter into and carry out contract or contracts pursuant to sections 102 and 103 of this Act."

We recommend that Section 106(d) be amended to include a second paragraph: "All such contracts and sub-contracts shall contain detailed employment plans showing how the contractor and sub-contractors will assure maximum employment and training of Indians on all such contracts. Such plans shall also contain specific provisions for implementing and monitoring compliance with such employment plans." Moreover, any authorization for funds pursuant to this Bill should also contain funds for providing technical assistance in the development of such employment plans, establishing appropriate employment offices to develop and implement such plans, including staffing costs, and should provide supplemental

funds for manpower training coincident with the implementation of such plans.

We recommend that Section 106(d) be amended as follows: "Payments of any grants or under any contracts pursuant to Section 102, 103 or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title including funds to cover the cost of fringe benefits, overhead and other indirect costs, the latter not to be deducted from program and/or service funds. The cost of fringe benefits, overhead and other indirect costs shall be determined by the BIA/IHS in connection with the Tribes, consistent with the provisions of OMB Circular A-87. The Secretary shall include the estimated costs of projected fringe benefits, overhead and other indirect costs in the Secretary's budget projections for each succeeding fiscal year, beginning FY 74."

Further, any authorization and appropriation in conjunction with S. 1017 should contain provisions for funds to enable the BIA/IHS and the Tribes to carry out these activities including the provision of funds to cover the actual projected costs of fringe benefits, overhead and other indirect costs associated with contracting, consistent with the provisions of OMB Circular A-87 and in a manner which does not place the Tribes in a position of subsidizing the indirect costs associated with contracting and self-determination by deducting indirect costs from budgets for service programs for the Tribes.

Relatedly, the Bill should provide authority for the BIA/IHS to transfer funds both within and across budget categories

within the Area budget at the request, and with the written consent of the Tribes,to afford maximum flexibility in implementing the Tribal self-determination plans.

Frequently the Tribes are caught in a ping-pong game between BIA Washington and Area Offices, where the buck is passed back and forth interminably and where the Area Offices have operated at variance with Washigton policies. Although decentralization of administrativa authority has its potential advantages, these become completely vitiated when Washington abrogates its ultimate authority for monitoring the implementation of its policies and the intent of Congress by Area Offices. This has happened in the past. It is therefore recommend that the Bill provide for a formal grievance procedure and a grievance office in BIA Washington with which the Tribes can deal directly in the event of conflict with Area offices, particularly in the development and implementation of Tribal self-determination plans. Such an office should be independently staffed and manned and should be given sufficient authority to act on behalf of the Assistant Secretary (or the Commissioner as the case may be) to arbitrate and make a final determination where disagreements exist. This office also should be given authority and the staff to monitor Area Office implementation of and compliance with overall contracting and self-determination policies of the Secretary and the Congress. These functions could be carried out by the National and Area Self-Determination Coordinators/Ombudsmen described above.

In closing, I call attention to the fact that no specific authorization is indicated in the Bill in conjunction with Title I.

Unless a specific and realistic authorization and appropriation are made to cover the cost of the provisions of Title I of the Bill, S. 1017 will in effect penalize the Tribes for the cost of self-determination which will be considerable. If the policy of self-determination is to have meaning, the Congress and the Administration must be prepared to assume responsibility for reasonable costs coincident with the implementation of the policy. Short of that, the Act could well become one of the most cynical pieces of legislation affecting Indian interests. On the other hand, S. 1017 can go far towards righting many of the wrongs which have been done the Indian people and Indian Tribes in the past. An authorization and subsequent appropriation are essential toward that end. In trust and based on the adoption of the recommendations contained herein, the Navajo Nation endorses S. 1017.

JSB/ik

June, 13 1973

June 4, 1973

STATEMENT OF ARTHUR LAZARUS, JR.
ON S. 1017, S. 1340, S. 1342 and
S. 1343, BILLS TO PROVIDE FOR
INCREASED PARTICIPATION BY INDIANS
AND INDIAN TRIBES IN THE GOVERN-
MENT AND EDUCATION OF INDIAN PEOPLE.

I am pleased to submit, on behalf of a number of Indian tribes which I serve as counsel, this statement of views concerning the bills dealing with Indian self-government and education now being considered by this Subcommittee. My tribal clients which have authorized this statement include

The Navajo Tribe
The Oglala Sioux Tribe
The Nez Perce Tribe
The Laguna Pueblo
The Salt River Pima-
Maricopa Indian Community
The Hualapai Tribe
The Seneca Nation

All of these tribes wholeheartedly support any efforts of Congress to increase participation by Indians in governmental decisions affecting their welfare and to improve Indian educational opportunities. S. 1017 is the one bill now before the Subcommittee which my clients believe is best designed to achieve both of these objectives.

S. 1017

Title 1 of S. 1017 would authorize the Secretaries of the Interior and Health, Education and Welfare (HEW) to contract with tribal organizations (defined essentially as the governing bodies of Indian tribes) to take over programs within the jurisdiction of these federal officers. Such programs would include those specifically authorized by the Johnson-O'Malley Act[1/] as well as general Indian programs and services which the Secretary of the Interior is authorized to administer and provide under 25 U.S.C. §13.[2/]

The bill would provide for grants to enable tribal organizations to carry out activities designed to prepare these organizations to take over federal programs. Federal employees could be detailed to assist in administering such grants and to help tribal organizations in the planning, conduct, or administration of programs under contracts between such organizations and the Secretaries of Interior and HEW. The appropriate Secretary also could permit tribal organizations, in performing any contract under S. 1017, to use existing school buildings, hospitals and other facilities owned by the United States.

1/ Act of April 16, 1934, 48 Stat. 596, as amended by the Act of June 4, 1936, 25 U.S.C. §452.

2/ This section is a codification of the Snyder Act of November 2, 1921, 42 Stat. 208, which provides basic authority for virtually every Indian program carried out by the Department of the Interior.

Contracts entered into pursuant to Title I would be exempt from some of the requirements of general federal contracting laws and regulations.[3/] One defect in Title I, however, is that such contracts are not exempt altogether from the panoply of federal procurement regulations. For example, contracts with tribal organizations would not appear to be exempt from regulations pertaining to the price to be paid by the government for performance of a contract. The government's basic policy in procuring property and services is to do so in a manner "calculated to result in the lowest ultimate overall cost to the Government." See 41 C.F.R. §1-3.801. Such a policy is very understandable when applied to an arm's-length transaction between the government and those doing business with it for a profit, but should not be of primary importance where contracting is to be used as a method of fulfilling the federal government's trust obligations to Indian tribes. S. 1017 should be amended, therefore, to permit the Secretary of the Interior to formulate special regulations, in place of the general contracting regulations,

3/ These contracts could be negotiated without advertising, and performance and payment bonds would not have to be obtained in connection with construction contracts. The competition requirements of federal procurement regulations would appear to be eliminated in that contracts can only be made with "tribal organizations" which are defined essentially to mean the duly elected governing bodies of Indian tribes. Also, payments under any contract could be made in advance without the necessity for complying with the usual, complicated and time-consuming procedures for securing approval of advance payments. Finally, contracts could be revised at the request or consent of the contracting tribal organization.

which would apply to contracts with tribal organizations. At the very least, an amendment should provide the Secretary with discretion to waive general contracting requirements in any case where the Secretary determines that application of such requirements would be inconsistent with the self-determination goals of S. 1017.

The overall approach to Indian self-determination reflected in the contracting provisions of Title I is a flexible approach. Tribal organizations would be permitted thereby to contract for tribal control and operation of complete programs as well as parts of those programs. To many tribes, this approach is more desirable, at least at the present time, than turning over absolute control of all federal programs to tribal organizations. Many tribes are suspicious that transfer of complete control and operation may amount to termination in the long run. These tribes would prefer to assume control gradually while observing the effect which this assumption of control will have upon the federal-Indian trust relationship.

Title II of S. 1017 would be known as The Indian Educational Reform Act of 1973 and is designed to provide or improve programs in the field of Indian education. The bill would authorize the Secretary of Interior to contract with states or tribal organizations to provide education

to Indians enrolled in the public schools. After June 30, 1975, education programs for Indians could no longer be conducted or administered under the authority of the Johnson-O'Malley Act. All Indian education programs then would have to comply with the provisions of Title II of S. 1017.

The Secretary, under Title II, would not be permitted to enter into a contract for the education of Indians unless he receives assurances that (1) a school district which would be affected by such a contract imposes a tax on real property in the district equal to the average rate of tax imposed on real property in five comparable school districts; (2) the affected school district has received its proportionate share of state and local educational funds; (3) any contract funds will be used for specified purposes[4/] pertaining mainly to Indian education; and (4) Indians have had sufficient opportunity to participate in formulating plans for Indian education.

Title II would also provide funds to improve the quality of personnel, professional and otherwise, in the field of Indian education and to construct or renovate school

4/ Funds provided under any educational contract would be used first to provide a school district affected by the contract with operational per pupil expenditures equal to the average such expenditures in five comparable school districts. Essentially, the funds provided would compensate for the existence of tax-exempt property in school districts of which Indians are residents.

buildings needed for Indians residing on reservations or trust lands. An Indian youth program would be established, designed to provide meaningful summer employment to Indian youth, and funds would be authorized for research and development in the field of Indian education. Finally, S. 1017 would direct the Secretary of Interior to suggest to the 94th Congress programs designed to meet overall Indian educational needs.

The Indian Educational Reform Act constitutes a meritorious attempt to encourage Indian self-determination in the field of Indian education, while regulating more strictly than has been the case in the past those state school districts which receive federal funds for the purpose of educating Indian children. Furthermore, many special programs envisioned by the Reform Act, and the funds which S. 1017 would provide for implementation of these programs, will provide not only specific authority for the Secretary of the Interior to develop new ways to respond to Indian educational needs, but should hasten, and provide the funds necessary for, that development.

S. 1340, S. 1342 and S. 1343

The basic Indian self-determination proposal of the Nixon Administration is S. 1343. The other Administration bills now being considered by the Subcommittee--S. 1340 and

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S. 1342--are incidental to S. 1343 and will not be discussed in this statement.[5/]

If enacted into law, S. 1343 would authorize any Indian tribe or community to request that it be given the control or operation of a program or service administered by either the Secretary of the Interior or the Secretary of Health, Education and Welfare.[6/] A request to take over federal functions could be made only "after consultations with the [appropriate] Secretary," and would have to be

5/ Section 3 of S. 1343 directs the Secretary to assist tribes in taking over federal Indian programs and services and authorizes the Secretary to detail, on a temporary basis, Civil Service employees to work with the tribes in this regard. S. 1340 is a bill designed to preserve civil service benefits for federal employees whom a tribe desires to employ in carrying out a transferred activity for a longer period of time than the 180-day period for which the Secretary is permitted to detail the employee under S. 1343.

S. 1342 deals with tribal operation of programs and services which are presently supported by federal funds but administered through the states. These programs are not covered by S. 1343 which deals solely with tribal assumption of control over programs operated directly by the federal government. S. 1343 is essentially a very limited version of the contracting legislation (S. 1017) proposed by Senators Jackson and Abourezk.

6/ Programs and services are defined under section 1(d) as including BIA and PHS "local activities and undertakings... and the related facilities, equipment, supplies, materials and budget."

"accompanied by a plan for carrying out the program or service requested." S. 1343 further provides that responsibility for the requested program or service would be transferred to the tribe or community within 120 days (or any agreed later date), regardless of whether the appropriate Secretary thought the group concerned capable of doing the job. The proposed legislation, however, is silent as to what happens when the Secretary and the tribe agree on the wisdom of the transfer, but disagree about the terms and conditions under which it is to be effected.

Subsection 2(f) of S. 1343 provides that any program or service taken over by an Indian tribe shall be treated in the future allocation of funds in the same manner as comparable programs and services still administered by the federal government. In other words, the bill does not contemplate that Indian control will result in any loss of money. The intent to continue federal funding is further spelled out in section 5 which declares that "[n]othing in this Act shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians."

S. 1343 also provides that "[s]hould an Indian tribe or community request retrocession to the [appropriate] Secretary of any program or service which was assumed by the Indian tribal organization," such voluntary retrocession

shall become effective within 120 days (or any agreed later date). Finally, section 2(e) authorizes the appropriate Secretary, after notice and a hearing, to recapture government control over a transferred service or program, if he finds its operation by the tribe involves either (1) a violation of the rights, or danger to the health, safety or welfare of the individuals concerned, or (2) "gross negligence or mismanagement in the handling or use of Federal funds."

While S. 1343 purports to provide Indian tribes with the opportunity for virtually unfettered control over federal programs, as a practical matter, some tribes may find the Bureau of Indian Affairs deeper in tribal affairs after taking control of a federal activity, since subsection 2(d) of the proposed legislation requires each tribe to submit an annual "report to the [appropriate] Secretary including an accounting and information on conduct of the program or service involved," and also authorizes an audit by the Secretary and the Comptroller General of the United States of tribal books and records relating to such program or service.

S. 1343 is an approach to fulfilling the long-standing federal promise of Indian self-determination alternative to the approach reflected in the contracting scheme of S. 1017. One of the main dangers of the bill is

that it would not provide any special preparation for a tribal organization to carry out a program after assuming control thereof. Accordingly, even isolated failures of transferred programs might be ascribed to alleged inability of a tribe to perform as well as the federal government, rather than to the fact of inadequate preparation. Furthermore, once programs had been retroceded to the jurisdiction of the federal government, the federal grip over Indian affairs might become tighter. S. 1017, on the other hand, represents to many indian tribes a more flexible approach to promoting Indian self-determination in that Indian tribes by contracting for performance of selected parts or all of some federal programs today will be preparing for permanent assumption of control over these programs tomorrow. Indian self-determination will then not be impeded by the threat or the necessity of retrocession.

STATEMENT OF UNITED SCHOLARSHIP SERVICE INC., DENVER, COLORADO ON
"INDIAN SELF-DETERMINATION AND EDUCATIONAL REFORM ACT OF 1973"

June 4, 1973

United Scholarship Service for American Indians is a private Indian-directed and staffed educational agency. In the thirteen years we have been in existence our primary work has been providing scholarship assistance to Indian university and college students. In this period of time we have provided direct financial assistance to over 3,000 individuals as well as counselling and recruitment for countless other students. United Scholarship Service's goal is to provide viable educational alternatives to Indian students and communities which support their growth and development and which other agencies will not support or which are not currently in vogue. In such a role we have done pioneer work in the area of educational local control and self-determination for Indian communites. We began to systematically work at this ten years ago, developing the first graduate and professional schools program, a private secondary program, financial aide packages for Indian college students, youth intern programs, and providing small enabling grants to communities who wanted to develop their own educational programs.

When we began our work in 1960 the total number of Indian university students was still in the hundreds. Indians in graduate and professional schools were less than a hundred. It was still accepted thought that Indians did not have the intelligence nor intellectual capability to adequately cope with university work. A congressional representative could state, "Indians by nature are suited to trades." In states of highest Indian population only three or four Indian students could be found on college campuses. Local control of educational programs at any level was unheard of and unthinkable. In 1963 our staff in a discussion about local control with an

Assistant to the Commissioner of Indian Affairs had that thinking called "semi-hysterical."

I relate these facts, which are now history, because to arrive at the point we are at today in consideration of the proposed legislation has taken an inordinate length of time, has been sometimes impossible, and always it has been arduous work. The proposed legislation is a needed and necessary corrective steps for Indian communities who want to control their educational programs. Any legislation in this area, because it is so long overdue, should be as comprehensive and encompassing as possible to ensure that local control and self-determination is reality and not illusion. My further remarks are addressed to this point in the areas in which I feel qualified.

Sound and competent educational planning for large numbers of people and especially for Indian communities and tribes must be conducted in an orderly manner from one administrative center. To fund individuals, private agencies, tribes, schools, state agencies, and universities for a given area and population is to invite chaos. It is necessary for educational planning and development at all levels from child development to the professional to be administratively localized within the tribe. The proposed legislation does not ensure this but it in fact diversified planning and control.

This diversification and chaos is what we should attempt to overcome because the cost is high in terms of people and funds. We need only look at the high cost of the destruction created by the Bureau of Indian Affair's Relocation-Employment Assistance Program from 1952 to 1972. That program, the effects of which are strongly felt today, systematically took away young and middle aged people from reservations and Indian communities, who made up the stable work forces, and trained them in a variety of technical and vocational fields, many totally unrelated and impractical in Indian

communities. Federal planners assumed these people would stay in cities and overlooked the fact that the majority maintained residency within their home communities, returned permanently in their mid-thirties and established Indian communities in urban areas. During that same period of time and up to the mid-sixties, higher education programs remained stagnant and insignificant in comparison to the vocational programs -- a difference annually of thirty million dollars. By the late sixties when local control began to take hold in reservations and Indian communites, tribes found themselves without stable work forces they could have had with competent planning and especially in light of total funds involved. And there was virtually no professionally trained Indian people resident within the communities and reservations, but there were jet mechanics and computer programmers. The condition exists today and only slowly is it being changed. In the total Indian population we still talk in numbers of less than a hundred when we think of whom is a lawyer or doctor, economic planner, architect or educational administrator working in Indian communities and for tribes.

It would be our recommendation that in addition to the proposed programs to be contracted by tribes that those within the "Development of Professionals," "Youth Intern Program" and "Educational Research and Development" also be contracted to tribe or Indian community and priority should be given them over other agencies. To ensure that these proposed programs are developed by tribe and community, provision must be made within the legislation for tribe and community to do educational planning for total educational development that would cover a period of four, six, or ten years. Funds must be provided for this. Then, if a tribe or community needs three early childhood specialists, two doctors, one lawyer, a special education program, etc. they can project this from their present population and needs assessment. They could readily determine which kinds of programs are needed, their priority, who

is available, how long it would take to have people trained and qualified and they would not have to leave any of this to change or have outside agencies dictate this as is now taking place. It ensures not only sound planning but also a more viable form of bi-cultural education. Also, it would afford the time and resources for work to be done in other areas usually ignored -- education of the physically and mentally handicapped, foster children, orphans, psychological and psychiatric services for young children, educational career development, etc.

It would be our recommendation that to implement this suggestion that the sections on "Educational Research and Development," and "Adult, Vocational and Early Childhood Education" must be revised. Both of these sections will, under their present form, produce nothing new in local control or self-determination. Research and Demonstration programs in this area have proved to be relatively worthless when they cover large populations and extreme cultural diversity. Conditions from one area to another area are never similar. One need only look at the recent National Indian Education Study (Office of Education) to verify this. Demonstration is exactly rapid change of a given set of conditions -- no more and no less and rarely can it be reduplicated. However, if a given tribe needs an educational survey of its membership or needs a demonstration project in a given area they should be afforded the right to initiate it and to hire the appropriate agencies and personnel. They should not be forced into a position where they must depend on outside research, demonstration or surveys, which may or may not relate to their given needs. In Part F, the cost of the reports of existant Bureau of Indian Affairs programs is exorbitant and unneeded. If I am not mistaken the kind of proposed planning was completed once already in the past four years. Because it would be national it would be virtually worthless. Instead these funds should be authorized to assist tribes to submit a comprehensive plan in the areas cited and only for their population. This would bring about the change that is being asked for in this section.

In Part B, "Development of Professionals in Indian Education" we already know that in education we have the largest number of Indian professionals in comparison to other fields. Over the years they rarely, if ever, have worked for tribe or community because the educational agencies and programs have not been controlled by tribe or community. Alter this and you will begin to develop a cadre of Indian people highly professional in Indian education. In addition, we have only recently come to acknowledge the fact that institutionalized bi-cultural and bi-lingual education in can exist in this country. Few universities provide competent training programs in this area, and even fewer universities have working knowledge and programs in areas of educational development in Indian communities, when it is local control that is the focal point. With these facts in mind, tribes and communities should be afforded the right and given priority in determining which universities they would choose to work with, which of their programs need educational consultation from the university, who should be given funds for further training. It would further strenghten the current trend of contracting higher education programs of the BIA to the tribe.

The Youth Intern Program is a vitually important part of the proposed legislation and yet of all the sections it is the most unclear. Tribes and communities must be provided contractual rights. From our past experience we have found that intern programs provide students the necessary setting and time to relate formal academic work to real situations in their own community. The most effective programs are those tightly structured and which meet two criteria -- the intern is located in his community of origin and that he be interned in a supervised job or other position that meets his interest, training and capability. For example, some of the early investigative work in local control and redistricting of schools was done by student interns from law school. Those intern programs which have drawn nationally and placed people in communities or agencies other than in their home areas have proved inoperable.

Nonetheless national programs dealing with specific areas -- health, law, economics, education, limited to upper division and graduate students are proving to be highly beneficial.

Our suggestion and criticism has been directed at strengthening the concept of local control and self-determination of education by Indian communities. We know that this change does not come about easily and will not in future, for we must correct over a hundred years of educational history where education for Indians was controlled and dictated by the federal government, churches and white agencies but never by Indian people.

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